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CHARLES ELMORE CROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1940

No. 936

WILLIAM DAVIES CO., INC.,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

Petition for Writ of Certiorari

CHARLES M. HAFT,
Attorney for Petitioner.

State Law Printing Company, 173 W. Madison St., Chicago—FRAnklin 5301

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TO THE HONORABLE, THE JUSTICES OF SAID COURT:

Your petitioner presents this, its petition, to this court for a writ of certiorari to the Supreme Court of Illinois, and in support thereof shows:

1. That this petition arises out of an application made by John Toman, County Collector of Cook County, Illinois, as *ex officio* County Collector, in the name of The People of the State of Illinois, to obtain a judgment of sale of real estate for the non-payment of taxes claimed

to have been levied by various taxing bodies for the year 1937.

Petitioner appeared and filed objections to certain of said levies including some of the levies of the city of Chicago.

The corporate fund levy as attempted to be made by said city was for the flat sum of $37,000,000 and required a rate of 1.784012 per centum applied to the assessed valuation of $2,073,976,391 to produce it.

Petitioner objected to so much of the $37,000,000 as was represented by the rate employed in excess of 1.29 per centum.

Prior to 1935 when one of the acts in question was passed, the statute pertaining to municipal levies provided that cities and villages of 150,000 and more population might levy 1.29 per centum, but that cities and villages having a population of less than 150,000 could levy only two-thirds of one per centum.

In 1935, the legislature passed an act leaving the rate of taxation for cities and villages having a population of less than 150,000 as it theretofore stood, at two-thirds of one per centum, but giving cities and villages having a population of 150,000 or more, the right to levy a rate of 1.29 per centum or $31,925,000 for 1934, whichever might be the greater, $36,000,000 for 1935, and $37,000,000 for 1936 and every year thereafter.

2. That November 8th, 1904, The People of the State of Illinois adopted an amendment to the Constitution known as Section 34 of Article IV.

Said section, with the more pertinent provisions italicized by petitioner, is as follows:

> "Sec. 34. *The General Assembly shall have power, subject to the conditions and limitations hereinafter contained to pass any law (local, special or general) providing a scheme or charter of local municipal*

government for the territory now or hereafter embraced within the limits of the city of Chicago. The law or laws so passed may provide for consolidating (in whole or in part) in the municipal government of the city of Chicago, the powers now vested in the city, board of education, township, park and other local governments and authorities having jurisdiction confined to or within said territory, or any part thereof, and for the assumption by the city of Chicago of the debts and liabilities (in whole or in part) of the governments or corporate authorities whose functions within its territory shall be vested in said city of Chicago, and may authorize said city, in the event of its becoming liable for the indebtedness of two or more of the existing municipal corporations lying wholly within said city of Chicago, to become indebted to an amount (including its existing indebtedness and the indebtedness of all municipal corporations lying wholly within the limits of said city, and said city's proportionate share of the indebtedness of said county and sanitary district which share shall be determined in such manner as the General Assembly shall prescribe: in the aggregate not exceeding five per centum of the full value of the taxable property within its limits, as ascertained by the last assessment either for State or municipal purposes previous to the incurring of such indebtedness, (but no new bonded indebtedness, other than for refunding purposes, shall be incurred until the proposition therefor shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special: *and may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes in accordance with the principles of equality and uniformity prescribed by this Constitution;* and may abolish all offices, the functions of which shall be otherwise provided for; and may provide for the annexation of territory to or disconnection of territory from said city of Chicago by the consent of a majority of the legal voters

(voting on the question at any election, general, municipal or special) of the said city and of a majority of the voters of such territory, voting on the question at any election, general, municipal or special; and in case the General Assembly shall create municipal courts in the city of Chicago it may abolish the offices of Justices of the Peace, Police Magistrates and Constables in and for the territory within said city, and may limit the jurisdiction of Justices of the Peace in the territory of said county of Cook outside of said city to that territory, and in such case the jurisdiction and practice of said municipal courts shall be such as the General Assembly shall prescribe; *and the General Assembly may pass all laws which it may deem requisite to effectually provide a complete system of local municipal government in and for the city of Chicago.*

No law based upon this amendment to the Constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special; and no local or special law based upon this amendment affecting specially any part of the city of Chicago shall take effect until consented to by a majority of the legal voters of such part of said city voting on the question at any election, general, municipal or special. Nothing in this section contained shall be construed to repeal, amend or affect section four (4) of Article XI of the Constitution of this State."

3. That the claimed authority for the levy by the city of Chicago for corporate purposes of an amount in excess of 1.29 per centum in substance, is:

Section 1 of Article VIII, Chapter 24 of the Illinois Statutes (Bar Association Statutes 1935, Par. 115, p. 359), the pertinent provisions of which are as follows:

"The city council in cities and board of trustees in villages may levy and collect taxes for corporate purposes in the manner following: * * *

provided, the aggregate amount of taxes so levied for any one year, exclusive of the amount levied for the payment of bonded indebtedness or interest thereon, and exclusive of taxes levied for the payment of judgments (for which a special tax shall have been authorized by law) and for the purposes of pension funds, working cash fund, public library and municipal tuberculosis sanitarium, in cities and villages of 150,000 or more population according to the last National or State census, for the year 1934 shall not exceed the rate of one and twenty-nine hundredths (1.29) per centum or the rate that will produce, when extended, the sum of thirty-one million nine hundred and twenty-five thousand dollars ($31,925,000.00) whichever may be the greater; and for the year 1935 shall not exceed the rate of one and twenty-nine hundredths (1.29) per centum or the rate that will produce, when extended, the sum of thirty-six million dollars ($36,000,000.00), whichever may be the greater; and for the year 1936, and every year thereafter, shall not exceed the rate of one and twenty-nine hundredths (1.29) per centum or the rate that will produce, when extended, the sum of thirty-seven million dollars ($37,000,000.00), whichever may be the greater, and in such cities and villages of 150,000 or more population the aggregate amount of taxes so levied for any one year for general corporate purposes or any other purpose or purposes, except amounts levied for the payment of bonded indebtedness or interest thereon and except taxes levied for the payment of judgments (for which a special tax shall have been authorized by law) and for pension funds and working cash fund purposes, shall be subject to the further limitation that it shall not exceed the estimated amount of taxes to be levied for such year for such purpose or purposes as determined in accordance with the provisions of section 2a of Article VII of this Act and set forth in the annual appropriation bill of such city or village, and the aggregate amount of taxes so levied for any one year, exclusive of the amount

levied for the payment of bonded indebtedness or interest thereon and exclusive of taxes authorized by Acts which by their terms provide that such taxes shall be in addition to taxes for general purposes authorized under this section shall not exceed the rate of two-thirds (⅔) of one per centum in cities and villages of less than 150,000 population according to the last National or State census, upon the aggregate valuation of all property within such city or village subject to taxation therein, * * *

The tax rates herein authorized for cities and villages having a population of 150,000 or more for the years (1934) and (1935) shall be retrospective in their operation; and further to make such rate for the year (1934) fully effective, if the city council or board of trustees, as the case may be, of any such city or village legally made appropriations in the year (1934) for the corporate purpose of such city or village during said year, and if such corporate authorities of any such city or village, also in the year (1934), in accordance with the provisions of this section, passed an ordinance, based upon such appropriations, in and by which ordinance they levied and attempted to levy taxes for the amounts of such appropriations as they deemed it necessary to collect from the tax levy of said year, the aggregate amount of which taxes so levied and attempted to be levied for general corporate purposes exceeds the aggregate amount of taxes which such corporate authorities were, at the time of such levy and attempted levy, authorized by law to levy for general corporate purposes, then the city council or board of trustees, as the case may be, of such city or village is hereby specifically empowered to levy an additional tax or taxes for said year (1934) upon all the taxable property of such city or village, for the general corporate purposes thereof as set forth in said prior tax levy ordinance to the extent that any amount or amounts, or any part thereof, therein set forth and thereby attempted to be levied for lawful purposes exceeds in the aggregate the aggregate amount of taxes which such corporate au-

thorities were, at the time of the passage of said prior tax levy ordinance, authorized by law to levy for such general corporate purposes; provided, that the aggregate amount of such additional tax or taxes and of the taxes theretofore levied for said year, exclusive of amounts levied for the payment of bonded indebtedness or interest thereon and exclusive of taxes levied (for the payment of judgments entered prior to the first day of January, 1930, and) for pension funds, (working cash fund), public library and municipal tuberculosis sanitarium purposes, shall not exceed the maximum amount of tax herein authorized to be levied for said year.

In order to make fully effective the tax rate herein authorized for the year (1935) for cities and villages having a population of 150,000 or more, the city council or board of trustees, as the case may be, of any such city or village, is hereby authorized and empowered to levy any supplemental or additional tax or taxes, the amount or amounts of which when added to the aggregate amount theretofore lawfully levied for all corporate purposes, * * * shall not exceed the maximum amount of tax herein authorized to be levied for the year 1935. Said tax for the year 1935 may be appropriated at any time during the year 1935 notwithstanding the annual appropriation ordinance and the annual tax levy ordinance of such city or village may have been passed prior to the date when this Act takes effect. * * *

It shall not be necessary for the corporate authorities of such city or village to make any further or other appropriations as a basis for any additional tax levies for the years 1934 and 1935 nor to specify in detail the objects or purposes for which any additional tax or taxes herein authorized for each of the years 1934 and 1935 are levied, but such tax or taxes may be levied under the style and description of taxes for the general corporate purposes of such city or village of the year 1934 or

1935, as the case may be, for which taxes shall not heretofore have been levied. * * *

The supplemental or additional taxes herein authorized for the years 1934 and 1935, or either of them, may be levied at any time subsequent to the first day of July, 1935, and prior to the first day of September, 1935, and upon the filing in the office of the County Clerk of a duly certified copy of any ordinance or ordinances levying any such supplemental or additional tax or taxes, it shall be the duty of said official to extend such supplemental or additional taxes upon the book or books of the Collector of state and county taxes within such city or village in the manner herein provided for such extension of city and village taxes";

That said act will herein be referred to as the tax levy act.

That no city or village other than Chicago will have a population of 200,000 within the next twenty-five years (Tr. of Rec., p. 8).

4. That in 1939, the legislature passed an act amending the 1935 act above referred to purporting to change the population figure of 150,000 used for classification purposes, to 500,000 population, from which it results that if the legislature had power to pass said act in 1935 and amend it in 1939, no city may now levy a tax of $37,000,000 for corporate purposes, unless it has a population of 500,000 or more, (Illinois Revised Statutes, State Bar Edition, 1939, Section 1, Article VIII, Chapter 24, page 405); that in view of the fact that no municipality in Illinois except Chicago has over 105,000 population (Tr. 7) as compared with the present day population of 3,390,000 in Chicago, the effect of the increase from 150,000 to 500,000 is, in all human probability, to perpetually bar all other cities from the classification, even if such classification were permissible.

Said 1939 amendatory act also eliminated the alterna-

tive levy of 1.29 per centum or $37,000,000, which ever may be the greater, and provided also that cities and villages having a population of more than 500,000 might levy at a rate that will produce, when extended, the sum of $37,000,000.

Said act also omitted all reference to the additional levies for 1934 and 1935 provided for in the original 1935 act.

Said amendatory act also added a new provision authorizing the levy of taxes for the current year and annually thereafter for poor relief, at a rate which, when extended, will produce not to exceed $6,000,000.

5. That said acts and each of them in fact and in truth by virtue of the description embodied therein, designate the city of Chicago as the only city that ever could or ever can avail of the provisions of the acts, and consequently the city of Chicago alone is designated in the acts as clearly and indelibly by description as if its name were therein written.

That aside from the tax levy act the three other acts here involved all pertain to the levy of a tax for pension purposes, and relate to:

(*a*) A Municipal court and law department pension fund. (Par. 19, Ch. 37.)

(*b*) A Library and Retirement Board pension fund. (Par. 1108, Ch. 24, p. 720.)

(*c*) A Board of Election Commissioners pension fund. (Par. 496, Ch. 46, p. 1520.)

(All references are to State Bar Association Edition, 1939 Statutes.)

That in each of the three instances last aforesaid, the act is limited to cities and villages having a population of 200,000 or more inhabitants.

6. That if the acts in question do not come within

the purview of Section 34 of Article IV they are special and local laws and as such violate Section 22 of Article IV of the state constitution.

7. The acts here involved were not nor were any or either of them submitted to a referendum vote, hence were not approved by a majority of the legal voters of Chicago. (Tr. 8.)

8. By petitioner's objections, it was urged that the three certain pension acts purporting to grant power in each instance to cities and villages having a population of 200,000 or more, to levy taxes to pay pensions to the several groups of municipal corporations, mentioned in said acts, were in each instance void because not submitted to, or approved by, a referendum vote.

The city of Chicago, according to the last Federal Census had a population of approximately 3,390,000.

9. That none of the pretended classifications embodied in the four acts here involved are based upon necessity and in no instance does the basis of classification bear any true relationship to the objects sought to be attained by the several acts; that said pretended classifications and each of them are unreasonable, arbitrary and capricious; that a city having a population of 150,000 inhabitants has need for only about one-twentieth of the annual tax levies for corporate purposes that is needed by the city of Chicago, which has a population of about 3,390,000 inhabitants, but said tax levy act gives to both the hypothetical city of 150,000 inhabitants and the city of Chicago the power to levy and collect taxes amounting to $37,000,000 annually; that assuming, as it seems reasonable to do, that the ratio of assessed valuation to population is approximately the same in the case of a city of 150,000 population and one of 3,390,000 population, then if it takes a rate of 1.784012 per centum applied to the assessed valuation of $2,078,-

000,000 to produce $37,000,000 in taxes, then the hypothetical city of 150,000 would have an assessed valuation of less than $100,000,000, which last mentioned figure would in turn require a rate of thirty-seven per centum to produce the $37,000,000 tax which the tax levy act empowers it to levy and collect; that this last mentioned rate would more than eat up all of the assessed valuation of such hypothetical city having a population of 150,000 in less than three years.

That a city of 149,900 population would ordinarily have property of practically the same assessed valuation as the one having a population of 150,000, but under the tax levy act involved herein, it could employ a tax rate of two-thirds of one per cent which, applied to the valuation of $100,000,000, would produce a tax of $666,-666, as compared with the $37,000,000 tax which the tax levy act permits the city with 150,000 to levy; that if the hypothetical city of 150,000 population were accorded by the act in question a tax rate of 1.29 per centum instead of the lump sum levy of $37,000,000, it could levy and collect annually on the basis of the $100,-000,000 valuation $1,290,000 as compared to the $37,000,-000 which the act permits it to levy and collect.

That it may well be that if the tax rate act were confined to the city of Chicago and it alone (which the opinion under consideration says it is not) and if it were to be approved by a majority of the legal voters in the city of Chicago, it would, by force of Section 34 of Article 4, be effective, but such approval is lacking.

10. Petitioner alleges that this Court has jurisdiction to grant the certiorari here prayed for, pursuant to Section 8 of the Judicial Code, (Session Laws, 1925, page 940) and presents unto the Court as reasons therefor and assigns as error committed by the Illinois Supreme Court, and as grounds for the issuance of such

writ and the reversal of the judgment of the Supreme Court of Illinois and that of the County Court of Cook County, the following:

(1) Each of the four acts involved in the proceedings here presented and the tax levies attempted to be made pursuant thereto are in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution of the United States in that they do not constitute due process of law for the following reasons, among others:

(*a*) None of said acts embody a provision requiring that it be submitted to a referendum vote of the legal voters of the city of Chicago before it should take effect in said city as is required by Section 34 of Article 4 of the Constitution of Illinois.

(*b*) None of said acts was in fact submitted to a referendum vote of the legal voters of the city of Chicago.

(*c*) None of said acts was approved by a majority of the legal voters of the city of Chicago and therefore did not nor did any or either of them take effect in the city of Chicago, in consequence of which each and all of the tax levies here involved are without authority of law and are without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

(2) The classifications embodied in said four acts and each of them are unreasonable, arbitrary and capricious and the basis employed in each of them has no just relationship in any instance to the purposes to which it is pretended that they apply, and they are, and each of them is, therefore, lacking in due process of law, and are in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

(3) That the Constitution of Illinois by Section 34 of Article 4 segregates the city of Chicago from all other cities and villages and puts it into a position or class by itself for the enactment of all laws pertaining to local municipal government, and thereby precluded the General Assembly from making any classification involving the city of Chicago, or passing any act empowering the city of Chicago to levy taxes for corporate purposes unless said act complies with the provisions of said Section 34, thereby rendering said act void and not due process of law, as required by Section 1 of the Fourteenth Amendment to the Federal Constitution.

(4) None of said acts has any application to any city or village in the State of Illinois, except the city of Chicago, and unless said acts are held to apply to the city of Chicago only, each of them is local and special, in violation of Section 22 of Article 4 of the Constitution of Illinois, and each is consequently void and of no effect and lacking in due process of law, contrary to Section 1 of the Fourteenth Amendment to the Federal Constitution.

(5) The so-called tax levy act here involved forever precludes any municipality, other than the city of Chicago from availing thereof, so far as the levies for 1934 and 1935 are concerned, except within a period of two months following the first day of July, 1935, when the population of all cities and villages, aside from the city of Chicago, was such as to render it absolutely impossible for any city or village to attain a population of 150,000 within said time in order to enable it to come within the classification of 150,000 population, by reason of which said act is unreasonable and void and does not constitute due process of law.

(6) The General Assembly of the State of Illinois in 1939, amended said tax levy act so as to preclude from entry into the class any city or village having a population of less than 500,000, thereby rendering it impossible, based on past experience in the increase in population in municipalities in the State of Illinois, for any municipality to ever attain the population required for membership in said class, in consequence of which said act is special and local and in violation of Section 22 of Article 4 aforesaid, and does not constitute due process of law, and violates Section 1 of the Fourteenth Amendment of the Federal Constitution, unless said act is held to apply to the city of Chicago alone, in which case it is not effective because it has not been approved by a majority of the legal voters of the city of Chicago.

(7) The ostensible purpose sought to be attained by said tax levy act is to enable a city or village in the State of Illinois to levy an annual tax for corporate purposes of $37,000,000. The fact that the General Assembly regarded $37,000,000 as an abundant annual revenue for corporate purposes for the city of Chicago, which has a population of over 3,000,000, shows conclusively that said $37,000,000 is approximately twenty times as great as is needed for a city or village having a population of 150,000; that if it requires a tax rate of 1.784012 per centum to produce $37,000,000 in Chicago, it would require a tax rate of approximately thirty-seven per centum to produce said sum in taxes in the hypothetical city or village of 150,000 population; that said tax levy act is unreasonable, arbitrary, confiscatory, and is void, and is not founded on necessity and does not constitute due process of law.

(8) There is no necessity for the classification embodied in any of the acts here involved, thereby ren-

dering said classification in each instance unreasonable, arbitrary and void, and they do not nor do any or either of them constitute due process of law.

(9) That Section 34 of Article 4 of the Constitution of Illinois provides that the General Assembly shall have authority to pass a law providing for a system of local municipal government for the city of Chicago, and specifies the subject of taxation as one of the elements or powers of such local municipal government. Said section also provides that no law so enacted by the legislature shall take effect in the city of Chicago, whether it be special, local or general, until it is approved by a referendum vote, and none of said acts was submitted to a referendum vote, thereby rendering each and all of said tax levies without due process in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

(10) None of the acts in question provided for their submission to a referendum. No referendum was had and none of the acts were approved. They are, therefore, not in effect in the city of Chicago and do not constitute the basis of the levy of the taxes here involved. Said tax levies are therefore without due process of law and in violation of the Fourteenth Amendment to the Federal Constitution, and are void.

(11) By the enactment of the several acts and each of them here involved, without a provision therein contained requiring a referendum, the General Assembly attempted to evade the provisions of Section 34 of Article 4 of the Constitution of Illinois, and to violate the provisions of the Fourteenth Amendment requiring due process of law, and to deceive the people and the courts into the belief that said acts and each of them were legitimate classifications, when in fact and in law they were and are mere pretenses used

by the General Assembly for the purpose aforesaid. Said acts, and each of them, are, therefore, void and violate Section 1 of the Fourteenth Amendment to the Federal Constitution.

(12) The opinion of the Supreme Court of Illinois, is evasive, arbitrary and capricious, by reason of which this Court is compelled to form its own conclusions concerning the Illinois Constitution and statutes, independently of the opinion of said State Supreme Court.

(13) That the meaning and validity of the acts here involved must be determined not by their form, or what they purport to be or do, but by their effect or what they in fact do.

(14) It was error for the State Court to refrain from passing upon the Federal constitutional question presented, and its failure in that regard leaves it to this Court to pass initially upon said question, together with all collateral questions relative thereto.

11. The pivotal question for decision is, Is the levy and collection of taxes as provided by said acts here involved and each of them a function or power of local municipal government as the term, "local municipal government" is employed in Section 34 of Article 4 of the Constitution of the State of Illinois, thereby requiring that said acts and each of them be approved by a majority of the legal voters of the city of Chicago before they take effect in the city of Chicago; that this question is not specifically ruled on by the opinion of the State Supreme Court but is determined in *City* v. *Reeves,* 220 Ill. 274, at 304, to which petitioner respectfully invites the attention of this Court.

12. That the Supreme Court of Illinois, in *City* v. *Reeves,* 220 Ill. 274, in its initial opinion concerning Sec-

tion 34 of Article 4, among other things, said that said section provides that:

(P. 282)

"the General Assembly shall have power, subject to the conditions and limitations therein contained, (1) to pass any law, local, special or general, providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago; * * * (3) and may provide for the assessment of property and for the levy and collection of taxes for corporate purposes in accordance with the principles of equity and uniformity prescribed by this constitution, * * * (7) may pass all laws requisite to effectually provide a complete system of local municipal government in and for the city of Chicago, * * * (8) provides for a referendum."

(P. 298)

"It is clear that the amendment of 1904 embraces but one subject, *viz.*, the establishment of local municipal government in the city of Chicago, and as the amendment was designed to confer legislative power upon the General Assembly to establish local municipal government in the city of Chicago, we think the amendment was properly proposed to article 4. * * *"

(P. 302)

"It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain in the city local municipal government."

13. That in *Swigart* v. *City,* 223 Ill. 371, the Court, at page 374, said:

"For many years the necessity for legislation for the city of Chicago which was suited to the condi-

> tions of the people generally throughout the state has been recognized. Under our constitution prohibiting local or special laws, this necessity could not be relieved, and various methods of meeting the required needs have been resorted to by the legislature. For the purpose of simplifying the procedure and permanently relieving the situation, the legislature of 1903 submitted an amendment to the constitution and at the November election 1904, it was adopted by the people, the effect of which was to permit the legislature to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago."

14. That in *People* v. *City,* 310 Ill. 534, at page 539, it is said:

> "The amendment of the constitution (section 34 of article 4) authorized the General Assembly to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago. It recognized the municipal courts authorized to be created in the city of Chicago as a part of the local municipal government, and provided that 'no law based upon this amendment to the constitution, affecting the municipal government of the city of Chicago, shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special.' "

That at page 540, the Court mentions certain laws that have been passed and approved by a referendum vote, and then refers also to other laws which were submitted to a referendum and rejected; that reference is then made to a number of laws that were passed by the General Assembly omitting the formality of a referendum as is the case with the acts here involved.

That the Court commenting on these last mentioned laws, says:

"These acts of the General Assembly are ineffective. In passing them it assumed an authority expressly denied to it by the amendment to the constitution. The intention of the amendment is manifestly that the powers conferred by it on the General Assembly shall be exercised subject to the right of the people of the city to reject the result. The General Assembly has not the final power, but its legislation, so far as based on this amendment is subject to a veto by an adverse popular vote."

The Court, then continuing at page 541, says:

"The amendment requires both the act of the legislature and the vote of the people before any law based upon the amendment affecting the municipal government can take effect. The same act and vote must again concur before a law changing the previous one can take effect. It would be an entire perversion of the amendment, which was intended to confer on the people of Chicago control of legislation affecting their local government, if they should now learn that the whole power of such control is now in the legislature; that having once adopted an act they were without power to prevent the legislature from entirely changing their scheme of government. The necessity of the referendum if they would retain the control of local government is shown by the legislation which has been cited which has been rejected."

15. In *People* v. *Gill,* 358 Ill. 261, at page 264, the Court said:

"In passing upon the act in question, we must bear in mind that section 34 of article 4, being the constitutional amendment of 1904, empowered the legislature to pass laws establishing a local municipal government in and for the city of Chicago, and, with the consent of the voters of the city, to pass any laws it deems requisite, limited only by the restrictions imposed by such amendment. * * * *The fact* must not be overlooked at any time, in the con-

sideration of section 34 *that no law based upon a provision of that section affecting the municipal government of the city of Chicago can take effect until such law has been consented to by a majority of the legal voters of the city voting on the issue at an election duly held.*"

16. In *Ptacek* v. *Coleman,* 364 Ill. 618, the Court, at page 622, says:

> "The constitutional requirement for the consent of the legal voters does not depend upon whether the law is general or special. It is applicable to any law, general, local or special, based upon the amendment and which affects the local municipal government of the city of Chicago."

That the question involved in the last mentioned case was whether the new General Practice Act was passed after the enactment of the Municipal Court Act, which had been approved by a referendum vote, and which General Practice Act was broad enough in its terms to apply to Municipal Court practice without said General Practice Act being approved by a referendum vote, amended the Municipal Court Act without being submitted to and approved by a referendum.

17. That in *City* v. *County,* 370 Ill. 301, there was involved the liability of Cook County, to the city of Chicago for court costs in criminal cases. It was contended that inasmuch as the statute involved was required to be submitted to a referendum, it was the people voting at the referendum who made the law effective instead of the General Assembly in whom it was claimed the power to impose the liability for costs was vested. In disposing of this question, the Court, at page 305, said:

> "Whether the purpose of a statute is local or public has a bearing only upon the question of a violation of sections 9 and 10 of article 9, and has no relation to whether it was properly enacted under

> section 34 of article 4 which expressly requires a referendum. * * * The net result of section 34 of article 4 is that, so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local and special laws, and that of uniformity, and imposed another, that of a referendum."

That the opinion in the case here presented does not pretend to repudiate anything said in any of the cases from which the quotations above set forth are made; that conversely the opinion herein cites and quotes approvingly from many of said cases.

18. That the cases from which quotations are heretofore made are not referred to by way of arguing the merits of the case, but for the purpose of showing that said opinion is not a judicial determination, but, is evasive, arbitrary and capricious.

That the italics employed herein are those of the petitioner.

19. That the opinion also says (Tr. 14):

> "The acts assailed by the appellant, are general laws, and do not purport to be based on section 34 of article 4 nor to affect only the municipal government of the city of Chicago."

That this statement is both immaterial and erroneous; immaterial because it makes no difference whether the act in question is local, special or general, it must be approved by a referendum vote before it takes effect in the city of Chicago; erroneous because the acts are both local and special as appears from matters hereinbefore set forth.

That the latter part of the opinion here involved, deals at length with the Municipal Court Act, which is in nowise involved in the case, and suggests that it is illustrative of the character of legislation requiring a refer-

endum; that the Court takes no note of the fact that the Municipal Court could not exist without taxation or that taxation, like a Municipal Court, is one of the specified subjects set forth in Section 34 of Article 4.

20. That the Court did not in its opinion give effect to the important and controlling proposition that if a general law affecting the local municipal government of the city of Chicago could become effective in Chicago without a favorable referendum vote, it would enable the General Assembly to deprive the people of Chicago of the right, conferred by Section 34 of Article 4, to reject a general law applicable to the local municipal government of the city of Chicago, and leave the legislature free, by passing general laws only, to thwart the purpose of Section 34. That the General Assembly alone could thus deprive the people of Chicago of the right to adopt or reject "any law, (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago."

21. That the opinion of the State Court reads in part (Tr. 12 and 13):

> "Section 34 of article 4 of our constitution, namely, the amendment adopted on November 8, 1904, so far as pertinent, provides that the General Assembly shall have power, subject to the conditions and limitations therein contained to pass any law, (local, special or general) providing a scheme or charter of local municipal government for the territory embraced within the limits of the city of Chicago. The law or laws so passed, the amendment also declares, may provide for the assessment of property and the levy and collection of taxes within the city for corporate purposes in accordance with the principles of equality and uniformity prescribed by the constitution. Further, the amendment provides that the legislature may pass all

laws which it may deem requisite effectually to provide a complete system of municipal government in and for Chicago. No law based upon this amendment, affecting the municipal government of the city, it is ordained, shall take effect until consented to by a majority of the legal voters of the city voting on the question at an election."

That by the language of the opinion above set forth, the Court answered, in the affirmative, the pivotal question set forth in paragraph 11 hereof, and that the court's numerous prior decisions hereinbefore referred to and the plain language of the constitution itself render said question susceptible of no other answer being made.

22. That said opinion further reads (Tr. 13):

"It is true, as appellant urges, that no law based upon section 34 of article 4, affecting the municipal government of Chicago can take effect until such law has been consented to by a majority of the legal voters of the city voting on the issue at an election duly held. (*People* v. *Gill*, 358 Ill. 261; *People* v. *City of Chicago*, 310 *id.* 534.) Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special. (*Ptacek* v. *Coleman*, 364 Ill. 618; *People* v. *City of Chicago*, *supra.*) As we recently observed in *city of Chicago* v. *County of Cook*, 370 Ill. 301: 'The net result of section 34 of article 4 is that, so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local or special laws, and that of uniformity, and imposed another, that of a referendum.'"

That had the opinion stopped with the language hereinbefore quoted and then stated the necessary and inevitable conclusion to be deduced therefrom, the Court would have been impelled to the conclusion that inasmuch as none of the four laws in question had been

submitted to a referendum, none of them were in effect in the city of Chicago, and that the levies in question were without authority and void, and that the objections filed in the County Court, raising the questions herein presented should be sustained. That the Court was however not content with the conclusion that necessarily followed as aforesaid, and proceeded to raise a question not in the case and not raised by appellant and says, "The authorities invoked do not hold, as appellant urges, that *every general law which may be applicable to the city of Chicago,* in common with all cities or cities and villages of a specified population is ineffective as to the city of Chicago unless approved by its legal voters."

That appellant has not urged and does not urge the ridiculous proposition which the opinion charges it with making; that Section 34 does not deal with *every general law* but only with those pertaining to the local municipal government of the city of Chicago, and petitioner alleges and urges that *every general law pertaining to the local municipal government of the city of Chicago,* must be approved by a referendum vote before it takes effect in the city of Chicago.

23. That the opinion seems to clearly recognize as correct what petitioner above alleges when said opinion next says, "The plain unequivocal language of section 34 of article 4 prescribes that those laws based upon this amendment affecting the municipal government of the city shall take effect only when consented to by a majority of the legal voters at a regular election." (Tr. p. 13.)

That the Court then apparently oblivious to the fact that it had in the earlier part of its opinion herein, referred to the fact that Section 34 provides that a law based on it and pertaining to local municipal government "may provide for the assessment of property and the

levy and collection of taxes within the city" * * * proceeds in its opinion as follows:

"Conversely, the mere fact that an act not based on the amendment may affect the local government of Chicago does not render submission to a referendum necessary." That this last statement ignores the proposition, theretofore recognized by the opinion, that a law, general, local or special, empowering the city of Chicago to levy taxes for corporate purposes is authorized by and based upon Section 34; that in the language of the opinion (Tr. p. 12) "The law so passed, the amendment declares, may provide for the assessment of property and the levy and collection of taxes within the City for corporate purposes."

24. That the opinion then proceeds to comment, "The acts as assailed by the appellant are general laws."

That it is theretofore recognized in the opinion (Tr. p. 13) "Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special."

That the opinion then proceeds (Tr. p. 14) "and do not *purport* to affect *only* the municipal government of the city of Chicago;" that the Court does not seem to realize that a general law cannot purport to affect only the city of Chicago but must purport to affect all cities or all of a class; that in fact and in law the laws in question are special and local as hereinbefore alleged; that it is not what a law purports to do but what it in fact does that must be considered, and this Court has many times so held.

That the opinion then says, "Manifestly, the General Assembly may enact legislation affecting the city of Chicago other than by statutes based upon section 34 of article 4;" that this statement is axiomatic, and does

not admit of dispute. That it is also axiomatic that the General Assembly *may not* enact legislation affecting *the local municipal government* of the city of Chicago except when such legislation is based on Section 34 of Article 4; that it is also true as stated in the opinion in question that no such law "shall take effect until consented to by a majority of the legal voters of the city voting on the question at an election." (Tr. 13.)

25. The opinion concludes, "We hold that the amendment of this constitution, section 34 of article 4, is not a bar to the challenged statutes, and that the General Assembly was empowered to enact them unless restrained by other provisions of the constitution. Appellant does not contend, however, that the acts are vulnerable to any other constitutional provision."

That passing for the moment the question of classification and that of whether said act must contain a provision calling for a referendum, petitioner does not challenge the conclusion, but prays this Court to take note that the question for decision is not answered by or embodied in the Court's above mentioned conclusion.

That the General Assembly might have abundant authority to pass each of the four acts and still they would not constitute due process of law upon which to base the tax levies by the city of Chicago here discussed, because none of the four acts were approved by a majority of the legal voters of the city and until so approved they do not take effect in the city and are no authority for the tax levies in question or any or either of them.

That in view of what the State Court has held in other decisions and elsewhere repeats in other parts of its opinion, it is definitely determined that the four acts in question, whether regarded as local, special or general, must be approved by a majority of the legal voters before they take effect in the city, and not having been

so approved they are not laws so far as the city of Chicago is concerned.

That petitioner contended in the State Court and now insists that the four acts here involved and each of them would be vulnerable to Section 22 of Article 4, if it were not for the fact that Section 34 of Article 4 authorizes the General Assembly to violate Section 22 of Article 4 when enacting laws for the local municipal government of the city of Chicago, and that if the acts here involved are not based upon Section 34, as so-called general laws they are inhibited by Section 22.

26. That so far as petitioner is informed the particular type of classification here involved comes before this court for the first time; that it is of a most vicious type and if permitted to stand as a precedent would open wide the door to other classifications that would in a large measure render the beneficient provisions of Section 1 of Article XIV of the Federal Constitution of no effect and eventually undermine constitutional government.

27. Petitioner respectfully shows unto the Court that it is only by the issuance by this Court of its writ of certiorari to the Supreme Court of Illinois and a decision of the questions here presented upon their merits, that petitioner's rights guaranteed to it by the constitution of the United States can be preserved.

Wherefore your petitioner prays this Court to cause to be issued its writ of certiorari directed to the Supreme Court of Illinois, commanding it to transmit to this court a transcript of its proceedings, to the end that this Court may review the same and may, upon such hearing, reverse and remand the judgment of said Court with such directions as this Court may adjudge.

WILLIAM DAVIES CO., INC.,
Petitioner,

By .....
Its Attorney.

(13)

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 936

WILLIAM DAVIES CO., INC.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

CHARLES M. HAFT,
Attorney for Petitioner.

State Law Printing Company, 173 W. Madison St., Chicago—FRAnklin 5501

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STATEMENT 1

ARGUMENT 7

I. When the Constitution classifies municipalities or authorizes the legislature to make certain specific classifications, each is in turn exclusive of all others, and the legislature may not go beyond the classification embodied in the Constitution or beyond that which the Constitution expressly authorizes the legislature to make. The legislature may not by addition, subtraction or modification affect what the Constitution has provided.

That when Section 34 of Article IV segregated the City of Chicago from all other municipalities, and placed it in an isolated position or class by itself for the purposes of local municipal government, the effect was to deny to the General Assembly all power to classify the City of Chicago in matters pertaining to its local municipal government.

The General Assembly is the legislative agent of the People of Illinois created by the People through the medium of the Constitution 7

That the General Assembly may in anywise exercise control over the instrument of its creation is a proposition that speaks its own refutation.

II. The pretended classification involving the Tax Levy Act here under consideration is arbitrary and capricious. The basis of classification—a population of 150,000 bears no reasonable or just relationship to the objects sought to be accomplished—the levy and collection annually of $37,000,000 in taxes.

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The classification involved in each and all of the pension acts is arbitrary and capricious. The basis of classification—a population of 200,000 bears no reasonable or just relation to the objects of the acts—the levy of taxes with which to pay pensions. There are many classes of municipal employes throughout the State of Illinois, for whom no pension provisions are made who are as justly entitled thereto as are the employes involved in the three acts in question. There is no necessity for the classification of municipalities for the purpose of the payment of pensions to their respective employes inasmuch as there is as much need for pensions being paid to municipal employes in municipalities of less size as there is in a municipality of 200,000 or more population.

The pretended classification in each instance is made for the sole purpose of singling out the City of Chicago as the only municipality that can possibly be affected by the acts involved or any or either of them, and to deceive the public and the courts in the belief that said acts involve classification, when their real purpose was to identify the City of Chicago without mentioning it by name, with the hope of avoiding a submission of said acts and each of them to a referendum vote in compliance with Section 34 of Article IV of the State Constitution. There is no necessity for any of the pretended classifications. 17

III. While legislative classifications are permissible under the Fourteenth Amendment to the Federal Constitution, they will not be tolerated unless there is a real necessity therefor. They must be reasonable and just. There must be a natural relationship between the classification made and the object sought to be accomplished by the legislation based upon the classification. 25

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IV. Section 34 of Article IV is a grant of power to the General Assembly to in turn grant powers to the City of Chicago constituting a scheme or charter of local municipal government. Under the well established rule of construction that the expression of one thing is to the exclusion of all others, said Section 34 embodies all of the power that the legislature possesses to legislate concerning the powers of local municipal government. Under this constitutional grant to the General Assembly, taxation is expressly made a power of local municipal government. Consequently, inasmuch as each of acts in question involves the power of taxation for the purposes of local municipal government of Chicago, none of said acts can take effect until approved by a majority of the legal voters of said city. 33

V. The acts in question and each of them violate Section 34 of Article IV of the State Constitution in that they do not nor do any or either of them embody a requirement that the act in each instance be submitted to a referendum and receive a majority of the votes of the legal voters of the City of Chicago before it takes effect in the City of Chicago. 38

VI. This case involves the violation of Section 1 of Article XIV of the Federal Constitution. The facts of the case are wholly undisputed. It follows that the rule stated by this Court in Traux v. Corrigan, 257 U. S. 312, at page 324, pertains. The rule there announced is, this Court "as an incident of its power to determine whether a federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here. * * * In view of these

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decisions, and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by demurrer, violates the Federal Constitution, this Court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the State Supreme Court in this regard." 40

VII. Each of the acts here involved assume to make classifications for certain specific purposes as distinguished from classifying municipalities generally, thereby rendering said acts and each of them special, in violation of Section 22 of Article IV, if they are not saved by bringing the acts within the purview of Section 34 of Article IV. 46

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No.

WILLIAM DAVIES CO., INC.,

Petitioner,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

MAY IT PLEASE THE COURT:

To avoid repetition, we refrain from stating herein the facts involved, and respectfully refer the Court to the petition filed herein for those facts.

We feel confident that from the matters set forth in the petition filed herein, without any argument on our part it has become apparent to the Court that the People of Illinois realizing the marked disparity between the

tax needs and other needs of the City of Chicago and those of any other municipality in the state, by Section 34 of Article IV of the Constitution segregated the City of Chicago from all other cities and villages in the state, and placed it in an isolated position, thereby enabling the General Assembly to pass laws for the City of Chicago that would be violative of Section 22 of Article IV of the Constitution, were it not that Section 34 of Article IV permitted the enactment of laws for the local municipal government of the City of Chicago, notwithstanding Section 22; that having thus isolated the City of Chicago from other municipalities, it is not now within the power of the legislature to undo what the Constitution has done, and by a form of pretended classification place the City of Chicago in a pretended class with other municipalities;

That the pretended classification embodied in each of the three Pension Acts, based as they are on a population of 200,000, precludes any accretion to the class for at least twenty-five years, and leaves the City of Chicago designated as the only member of the class;

That the classification of 150,000 employed in the Tax Levy Act left only two months' time within which any municipality other than Chicago might attain a population of 150,000, and thereby avail of the portion of the act applying to tax levies for the years 1934 and 1935; that time having elapsed many years ago it has been conclusively demonstrated that no municipality has come within the class in time to avail of all of its provisions; that to make the matter still worse, the General Assembly constructed another insuperable barrier to any city other than Chicago coming into this class by raising the population limit in the year 1939 from 150,000 to 500,000, thereby in all human probability forever precluding any municipality, other than the City of Chicago, from membership in the pretended class;

That there is no necessity for the grant by the General Assembly to any municipality, outside of Chicago, of authority to levy $37,000,000 in taxes, inasmuch as no municipality now has over 105,000 population, and inasmuch as the City of Chicago has 3,390,000 population, and if at some time in the future a city should attain a population of 150,000, it would serve no useful purpose, because the population limits for the class is now 500,000, but even if it were otherwise, presumptively, and on a population basis, a city of 150,000 would need about one twenty-second part of the revenue required by the City of Chicago, or not to exceed $1,700,000, so that this Court has undoubtedly observed from the petition that there is no necessity for the Tax Levy Act; that it is unreasonable, and that there is no just relationship between the basis of classification employed and the levy of $37,000,000 annually in taxes, that the Tax Levy Act is purely arbitrary, capricious and void;

That while the state court opinion says that the Tax Levy Act does not purport to apply to the City of Chicago alone, an act must be construed according to its effect, and not according to its purport, and when so construed, the act does designate by a very definite description the City of Chicago to the exclusion of all other cities and villages, although the City of Chicago is not mentioned therein by name;

That in order that the due process of law requirement of the Fourteenth Amendment to the Federal Constitution may not be defied or violated by state legislatures and state courts, it becomes the duty of this Court to pass upon the federal question presented to the state court, and by it ignored, and in so doing strike down each and all of the four acts in question.

In an endeavor to be of help to the Court, should that help be desired, we proceed to first call the attention of

the Court to a few general rules announced by you in other cases and then briefly discuss certain of the questions arising on the record and cite some of the decisions pertaining thereto.

A few pertinent generalities are:

The purpose of the Fourteenth Amendment is to extend to the citizens and residents of states the same protection against arbitrary state legislation, affecting life, liberty and property as afforded by the Fifth Amendment against similar legislation by Congress.

Tonawanda v. *Lyon,* 181 U. S. 389.

Tax laws must be restrained under the Federal Constitution if by their necessary operation they are inconsistent with the fundamental principles embraced by the requirements of due process.

Southwest Oil Co. v. *Texas,* 217 U. S. at 118.

The Federal Courts are not bound by the State Court's construction of a tax law.

Quaker City v. *Commonwealth,* 277 U. S. 389.
Louisville v. *Coleman,* 277 U. S. 32.

The initial construction of Section 34 of Article IV is embodied in *City* v. *Reeves,* 220 Ill. 274. The opinion in the case was filed at the April Term 1906. It will, therefore, be observed that the opinion has stood as a beacon light by which to guide both courts and attorneys concerned with the scope and meaning of Section 34 of Article IV, particularly in view of the fact that the opinion has never been either refuted or criticised. It is worthy of note that the opinion here involved does not even mention the case. For some reason it was ignored. Certainly it could not have been distinguished, from the case here presented.

We assume that this Court will read with interest the opinion in its entirety and content ourselves therefore with a bare outline of the points covered by the opinion.

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> "It is clear that the amendment of 1904 embraces but one subject, viz., the establishment of local municipal government in the city of Chicago, and as the amendment was designed to confer legislative power upon the General Assembly to establish local municipal government in the city of Chicago, we think the amendment was properly proposed to article 4," etc.

We submit that the language above quoted clearly means that whatever legislation the General Assembly may enact granting any powers of which the city may avail in its local municipal government, is an act based upon said Section 34 and must be approved by a majority of the legal voters of the City of Chicago.

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> "It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain in the city local municipal government. If it be conceded that local municipal government is the object sought to be accomplished by the amendment of 1904, as it must be, then to create a municipal court, to abolish courts whose jurisdiction conflict with said court and to provide for raising revenue to supply the city's needs must, we think, also be conceded to be matters germane to that object."

In harmony with the foregoing is what appears in the opinion in the case here involved, where the State Court (Tr. 13) says:

> "It is true, as appellant urges, that no law based upon section 34 of article 4, affecting the municipal government of Chicago can take effect until such

> law has been consented to by a majority of the legal voters of the city voting on the issue at an election duly held. (*People* v. *Gill,* 358 Ill. 261; *People* v. *City of Chicago,* 310 *id.* 534.) Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special. (*Ptacek* v. *Coleman,* 364 Ill. 618; *People* v. *City of Chicago, supra.*) As we recently observed in *City of Chicago* v. *County of Cook,* 370 Ill. 301: 'The net result of section 34 of article 4 is that, so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local or special laws, and that of uniformity, and imposed another, that of a referendum.' * * * The plain, unequivocal language of section 34 of article 4 prescribes that those laws based upon this amendment affecting the municipal government of the city shall take effect only when consented to by a majority of the legal voters at a regular election."

The index hereto will of course enable the Court to determine which of the questions argued you desire to examine.

While we discuss several questions in this brief, if this Court agrees with the rule that where a constitution classifies municipalities, the legislature is precluded from making any classifications, as that rule is announced in *City* v. *Vandemark,* 100 Ohio State 365, and repeated in numerous other cases cited, it will dispense with the consideration of most of the other questions discussed, inasmuch as the classifications employed in each of the acts in question will be in contravention of the Fourteenth Amendment and void.

ARGUMENT.

I.

When the Constitution classifies municipalities or authorizes the legislature to make certain specific classifications, each is in turn exclusive of all others, and the legislature may not go beyond the classification embodied in the Constitution or beyond that which the Constitution expressly authorizes the legislature to make. The legislature may not by addition, subtraction or modification affect what the Constitution has provided.

That when Section 34 of Article IV segregated the City of Chicago from all other municipalities, and placed it in an isolated position or class by itself for the purposes of local municipal government, the effect was to deny to the General Assembly all power to classify the City of Chicago in matters pertaining to its local municipal government.

The General Assembly is the legislative agent of the people of Illinois created by the people through the medium of the Constitution.

That the General Assembly may in anywise exercise control over the instrument of its creation is a proposition that speaks its own refutation.

The General Assembly of Illinois by each of the Pension Acts here involved, has pretended to place the City of Chicago in a class with other cities having a population of 200,000 or more for the purpose of taxation for local municipal government, and by the Tax Levy Act did the same thing on the basis of 150,000 population. Said constitutional Section 34 has segregated the City of Chicago from all other cities and villages in the state, and has placed it in an isolated

position or class by itself for the purpose of taxation concerning its local municipal government. The Constitution and the four acts in question are repugnant to each other. Either the Constitution or the four acts must give way. The Supreme Court of Illinois has in effect asserted that the constitutional classification is subordinate to the classification contained in the four acts in question. This assertion is so startling and revolutionary as to provoke the challenge of want of due process of law and, we submit, should receive the consideration of this Court at the earliest possible moment.

Our investigation does not disclose to us any instance in which this Court has been called upon to rule upon the precise question here involved. The Ohio Courts have had the identical question before them on at least two occasions.

In *City* v. *Vandemark,* 100 Ohio State 365, the Court deals with the subject of a constitutional classification excluding any classification by the legislature. While that case dealt with the constitutional classification of all cities and villages and we are here concerned with the constitutional classification of the City of Chicago only, the principle announced clearly applies to the situation here involved. In that case, at page 371, the Court says:

> "The constitutional convention retained the provision that 'General laws shall be passed to provide for the government of cities and villages,' substantially as in the former constitution, but in furtherance of its manifest and clearly expressed purpose to take from the legislature the power theretofore exercised by it relative to the government of the municipalities of the state and to confer such powers of local self-government directly upon the municipalities themselves the constitution provides in Section 1, Article XVIII, that 'Municipal corporations are hereby classified into cities and villages.

All such corporations having a population of 5,000 or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.' It is to be observed that the constitutional convention not only did not confer any power whatever upon the legislature to make any classification of municipalities, *but it denied the legislature such authority by retaining and exercising that jurisdiction itself.* It thereby withheld that subject absolutely and entirely from legislative control and permitted it to be no longer a matter of statutory jurisdiction. The general assembly has no power to enlarge or limit a jurisdiction specifically conferred by the constitution. (*The Cincinnati Polyclinic* v. *Balch,* 92 Ohio State 415.) It seems equally clear that a jurisdiction assumed and exercised by the constitution itself cannot be exercised also by the legislature in the absence of authority conferred upon it so to do by express and explicit provision of the constitution."

Speaking further at page 372, the Court says:

"It having been declared by the constitution that the municipalities of the state should be classified upon the basis of population, into cities and villages, it must be presumed that it was intended that there should be no further classification for the purpose of legislation affecting municipal government."

In *City* v. *Endly,* 38 Ohio State 528 at page 534, the Court quotes approvingly from *City* v. *Vandemark, supra,* and then says:

"This being true, we are of opinion that it is not a question of whether the act is general or special, for all legislation pertaining to municipal government which has for its basic principle a classification of cities is forbidden, and such an act cannot be justified even if it has a general and uniform operation. This court is not inclined, in face of the people's mandate, to write that in a constitution which the people have failed or refused to do. If

> the law should be enlarged so that general classification acts may be enacted, that is the sole prerogative of the people themselves, and we have no disposition to countenance an exercise of that withheld power which would no doubt afford encouragement to further legislative enactments thereon and a violation of the plain intent of the constitution makers and the sovereign power who adopted municipal home rule. We can but remember that prior to amendment it was under the guise of a general law that classification reached its absurd zenith."

We respectfully submit that in these two Ohio cases, we have decisions squarely holding exactly what we contend is the law.

Those two cases are identical in principle with the case here presented to this Court for its consideration. The only factual difference between the Ohio cases and this case is that the Ohio cases involve a constitutional classification of all municipalities, while this case involves the classification embodied in Section 34 of Article IV of the Illinois Constitution, whereby the City of Chicago is segregated from all other cities and put into an isolated position or class by itself.

If, as held in the Ohio cases, the legislature is by the constitutional classification there involved precluded from all classification of municipalities, for the purpose of local municipal government, by the same logic and reasoning the General Assembly of Illinois is precluded from making any classification involving the City of Chicago, so far as local municipal government is concerned.

Other cases in keeping with the Ohio cases are:

Kansas City v. *Stegmiller,* 151 Mo. 189.
Mlyton v. *Borden,* 164 Mo. 221.
State v. *Mason,* 153 Mo. 23.
St. Louis v. *Dorr,* 145 Mo. 466.

Murnane v. *St. Louis,* 123 Mo. 479.
Fragley v. *Phelen,* 126 Cal. 383.
Mintzer v. *Shilling,* 117 Cal. 361.

While no Illinois case determines the question here involved so squarely as do the two Ohio cases, to which we have just referred, *People* v. *Election Commissioners,* 221 Ill. 9, does determine the question, in principle. In that case, at page 21, the Court said:

> "Section 3 of article 4 of the constitution fixes the eligibility for office of a senator or representative, and the only requirement as to residence is that he shall have resided for two years next preceding his election within the senatorial district. The act adds a new qualification and imposes a new restriction upon the candidates and the voters, by requiring that the candidates shall come from particular counties of the district. It is not within the power of the legislature to add to the qualifications fixed by the constitution or to impose the additional restrictions, and that provision of the act must be considered void."

By the same token it is not within the power of the legislature to place Chicago in a classification other than that in which the Constitution has placed it.

The opinion then at page 23 continues:

> "In view of the well known evils of local and special legislation, the people provided, in section 22 of article 4 of the constitution, that the legislature should not pass local or special laws in any of a considerable number of enumerated cases, among which were laws regulating county and township affairs. The section contains a general prohibition against a special law in any case where a general law can be made applicable, but the general provision is addressed to the judgment and discretion of the legislature. In the enumerated cases the people saw fit to make a rule which could not be disregarded or evaded under any pretext. * * * The

act is divided into two broad divisions, one of which is to be in force only in Cook County and the other applies only to the rest of the State outside of Cook County. In effect there are two acts. The first sixty-four sections seem to apply, in general terms, to the State at large, but section 65 provides that in all counties having a population of 125,000 or more the subsequent sections only shall apply, except as thereinafter provided. Cook County is the only county in the State having a population of 125,000 or more, and there is no other county that could have been expected by the legislature to reach that population at any time in the near future. It would make no difference, however, if other counties besides Cook were included with it in the classification provided for by the act. * * * The situation has no relation whatever to political rights. The sections of the act numbered 65 to 119 inclusive apply only to Cook County, and it was not in the contemplation of the legislature that they could apply to any other. There is, perhaps, no local or special object of legislation which may not be covered by general language, but if the language used can only be applied to one county it means that county. The substance and effect of an act determine its character and not merely the form of language employed, and this act constitutes one law for Cook County and another for the State at large outside of that county."

The facts involved in this case make it quite to the point, especially so, because no city other than Chicago has over 105,000 population (Tr. 7), and none will attain a population of 200,000 within the next twenty-five years (Tr. 8), while Chicago now has a population of 3,390,000.

People v. *Weston,* 358 Ill. 610, involved an act passed by the General Assembly falling within the sphere of Section 12 of Article X of the Constitution concerning classifications. The Court held that the legislative act

attempted to classify, which it was precluded from doing by reason of the constitutional classification, and cited *People* v. *Gaulter*, 149 Ill. 39.

People v. *Vickroy,* 266 Ill. 384, is another case which involved the same constitutional provisions which were before the Court in the case last above referred to, and the decision in the *Vickroy* case is in harmony with the case last above cited.

In *People* v. *McCormick,* 261 Ill. 413, it appears that the Constitution of Illinois provides that no person shall be eligible to the office of County Commissioner of Cook County, who has not resided in the state for one year. The legislature undertook by statute to impose additional conditions for election to the office. The Court, at page 424, said:

> "The expression of the disabilities specified excludes others. The declaration in the constitution that certain persons are not eligible to office implies that all other persons are eligible."

In *Consolidated Coal Company* v. *Miller,* 236 Ill. 149, it appears that Section 3 of Article IX of the Constitution of Illinois authorizes the legislature to exempt from taxation by general law, the property of states, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. The General Assembly undertook by a statute to make an exemption not specified in the Constitution. At page 152, the Court said:

> "In the construction of statutes the rule is, that an enumeration of certain specified things excludes all others not therein mentioned, and in the case of *People's Loan and Homestead Association* v. *Keith,* 153 Ill. 609, that rule was applied to the enu-

meration in section 3 of certain specified property which may be exempted by general law, and it was there determined that such enumeration is a clear limitation upon the power of the legislature to exempt any other property. The capital stock of the appellant is property, (*The Hub* v. *Hanberg,* 211 Ill. 43,) and such capital stock does not come within the enumeration of property which the legislature is permitted to exempt from taxation. It follows that the exception contained in paragraph 4 of section 1 of the Revenue act is in conflict with the constitution and void."

The Supreme Court of Illinois in *Pettibone* v. *West Chicago,* 215 Ill. 304, 333, held that the act there involved was local and special, and applied to the Town of West Chicago alone although said town was not mentioned by name. Nevertheless, the description embodied in the act was such as to identify the town with certainty.

The Court held that the means employed in the act were a mere device to evade the constitutional provision prohibiting special legislation, citing in support of its conclusion, *Devine* v. *Cook County Commissioners,* 84 Ill. 590, and *Strong* v. *Dignan,* 207 Ill. 385.

By the same token, inasmuch as the acts in question employ a bogus classification which is applicable to no city other than the City of Chicago, said acts and each of them apply to the City of Chicago alone and each of them must therefore be approved by a referendum before becoming effective in the City of Chicago.

The rule that the expression in a statute or constitution of one thing is to the exclusion of all others is a rule so universally recognized that little should be said by us on the subject.

The rule above referred to is stated in *People* v. *Wiersema State Bank,* 361 Ill. 75, where, at page 85, the rule is stated thus:

> "The rule that the expression of one thing or one mode of action in an enactment excludes any other, even though there may be no negative words prohibiting it, has been the settled law of this state since 1872. *Sammis* v. *Clark,* 13 Ill. 544; *Vestal Co.* v. *Robertson,* 277 *id.* 425."

In *Vestal Co.* v. *Robertson,* 277 Ill. 425, the Court approved the proposition above stated, and in so doing, at page 429, said:

> "The doctrine was also announced and approved in the case of *Diversey* v. *Smith, supra,* that an affirmative statute introductive of a new law which directs a thing to be done in a certain manner means that such thing shall not be done in any other manner, even though there be no negative words prohibiting it."

Applying this rule to Section 34 of Article IV, we take it to clearly mean that when said section segregates Chicago from all other municipalities and puts it in a class or position by itself for the purposes of local municipal government, it means that such constitutional classification shall be exclusive of all legislative classifications.

As acts requiring in each instance, a classification upon which to base them, we submit that as to the City of Chicago the acts in question are and each of them is a nullity because, as above pointed out, the City of Chicago is not subject to legislative classification for the purpose of tax levies concerning local municipal government.

As acts predicated upon Section 34 of Article IV, they are void,

(*a*) Because they do not nor do any or either of them provide for a referendum as said Section 34 requires.

People v. *City,* 310 Ill. 534, 540.

(*b*) Regardless of a provision contained in the acts themselves in each instance, they have no effect in the City of Chicago because they have not nor have any of them been approved by a majority of the legal voters of the City of Chicago, as required by Section 34 of Article IV.

Ptacek v. *Coleman,* 364 Ill. 618.

We therefore respectfully submit that both upon reason and authority, it must be definitely said that the General Assembly was and is absolutely without power to make a classification including within it the City of Chicago, and that its attempts here involved so to do are void.

The only possible theory upon which the acts involved could be sustained would be that it was the legislative intent to have them apply to the City of Chicago alone, and referred to the City of Chicago by description instead of by name. Upon this theory, the acts might be said to be valid if a failure to provide therein that they must be submitted to a referendum before they become effective in the City of Chicago is not essential to their validity. While this would leave the acts valid, it would leave them without effect in the City of Chicago unless and until they are submitted to a referendum and receive a majority of the votes cast by the voters of Chicago.

We next discuss classification regardless of the fact that the City of Chicago is not subject to any legislative classification.

II.

The pretended classification involving the Tax Levy Act here under consideration is arbitrary and capricious. The basis of classification—a population of 150,000 bears no reasonable or just relationship to the objects sought to be accomplished—the levy and collection annually of $37,000,000 in taxes.

The classification involved in each and all of the pension acts is arbitrary and capricious. The basis of classification—a population of 200,000 bears no reasonable or just relation to the objects of the acts—the levy of taxes with which to pay pensions. There are many classes of municipal employes throughout the State of Illinois, for whom no pension provisions are made who are as justly entitled thereto as are the employes involved in the three acts in question. There is no necessity for the classification of municipalities for the purpose of the payment of pensions to their respective employes inasmuch as there is as much need for pensions being paid to municipal employes in municipalities of less size as there is in a municipality of 200,000 or more population.

The pretended classification in each instance is made for the sole purpose of singling out the City of Chicago as the only municipality that can possibly be affected by the acts involved or any or either of them, and to deceive the public and the courts in the belief that said acts involve classification, when their real purpose was to identify the City of Chicago without mentioning it by name, with the hope of avoiding a submission of said acts and each of them to a referendum vote in compliance with Section 34 of Article IV of the State Constitution. There is no necessity for any of the pretended classifications.

The Tax Levy Act assumes to make a population of 150,000 the basis of a classification whereby any municipality supposedly in the class may levy annually taxes in the amount of $37,000,000. As we understand the

rule to be, there must be a necessity for the classification involved in the statute. We naturally, therefore, inquire what necessity is there for the levy by a municipality with a population of 150,000 of taxes amounting to $37,000,000? Another rule which seems to be quite universally established is that there must be a reasonable relationship between the basis of classification and the object sought to be attained, by the act involving the classification. We again inquire what is the reasonable relationship between a municipality of 150,000 population and a tax levy annually of $37,000,000? Let us consider the facts. The City of Chicago has a population of 3,390,000. No other municipality in the state has a population of over 105,000, but assuming, for the purpose of discussion, although denying as a matter of fact, that some municipality will, some day within the reasonably near future, have a population of 150,000, we note that the City of Chicago has an assessed valuation of $2,073,000,000. It requires a tax rate of 1.784012 per centum applied to the $2,073,000,000 to produce a tax of $37,000,000. We think it is fair to assume that there is a reasonable relationship between the population of a municipality and the assessed valuation of the property within it, and upon the assumption that the ratio existing in Illinois would be substantially the same ratio in a municipality of 150,000 population as in Chicago with a population of 3,390,000, it would give that municipality a valuation of not to exceed $100,000,000, and it would require a tax rate of 37 per centum to produce $37,000,000 in taxes. It seems that $37,000,000 of taxes is quite sufficient to serve the corporate purposes of the City of Chicago for one year. On the basis of population, it should take about one twenty-second of that amount to serve a municipality of 150,000 for one year or about $1,700,000.

If a fixed rate of 1.29 were to be employed and ap-

plied to this pretended class on the basis of $100,000,000 valuation for the municipality of 150,000, it would produce a tax of $1,290,000 as compared to the lump sum levy proposed of $37,000,000.

We note by the Tax Levy Act in question that a municipality of less than 150,000 may employ a tax rate of only two-thirds of one per cent. Consequently, if a municipality of 149,900 population levied the full limit accorded to it by the act in question, it would levy a little less than $666,666 compared to the $37,000,000 that the 150,000 population municipality coming within the pretended class fixed by the statute could levy, so that a difference of 100 in population would make a difference in tax levy of a little over $36,300,000.

Devine v. *Cook County Commissioners,* 84 Ill. 590, involved an act permitting the issuance of bonds for the erection of a court house on the site heretofore used for that purpose in a county of over 100,000 inhabitants.

The Court, at page 592, said that it would take judicial note that no county in the state contains over 100,000 inhabitants, and that it could not be expected, by any ordinary influx or increase of population, that any county would have that population within the brief period of six years fixed by the act as the duration of the law.

The Court, in passing upon the validity of the act as a violation of Section 22 of Article IV of the State Constitution, said:

> "No express words that could have been used by the General Assembly could limit the operation of the law to the county of Cook more absolutely and definitely than those employed."

The Court also said that designating counties as a class according to a minimum population, which makes it absolutely certain but one county in a state can avail

of the benefits of a law applicable to such class, cannot but be regarded as a mere device to evade the Constitution forbidding special legislation.

The Court further said:

> "Power is given the General Assembly to classify counties by population and to regulate by general law fees and salaries of certain local officers, according to class. But that is a grant of power for a specific purpose indicated, and it would seem to be a restriction upon the power to classify counties by population or otherwise, for any purpose not mentioned in the constitution."

If, as the Court said, that six years as the duration of an act was so short a time that it did not admit of any accretion to the class of 100,000 fixed by the statute, then with far greater force it may be said in this case that inasmuch as part of the Tax Levy Act, *viz.,* that referring to taxes for the years 1934 and 1935, must be availed of on or before the first day of September, 1935, and the act went into effect on the first day of July, 1935, it left but two months for populations to increase so that any municipality could come into the class, thereby rendering the Tax Levy Act one referring to the City of Chicago, alone.

In *People* v. *Crawley,* 274 Ill. 139, the Court, at page 142, said:

> "The general principles governing the construction of constitutions are the same as those that apply to statutes. (*People* v. *Hutchinson,* 172 Ill. 486.)"

In the case last cited, the Court, at page 145, said:

> "If it cannot be done by this law, then a law which by its words seemed to apply to all cities having such provisions would not be constitutional if, in fact, it only applied to the city of Jackson-

> ville, for this court has more than once held that a statute general in its terms but applicable only to one single locality was special and not general."

People v. *Cooper,* 83 Ill. 585, like the proceeding here involved, was a tax case. At page 591 of the opinion the Court made the pertinent remark:

> "If the act must necessarily produce a result clearly and unquestionably forbidden by the constitution, it cannot be upheld, whatever may be its form or profession."

In *People* v. *Jarecki,* 363 Ill. 180, the Court had before it an act providing that delinquent taxes might be paid in seven annual installments in counties containing 500,000 or more inhabitants. At page 184, the Court said:

> "The remaining question involved in this point is whether this act is general, or special and local. We take judicial notice that Cook County alone has a population of 500,000, and that the second county in size in this state (St. Clair) has less than 158,000 inhabitants."

At page 185, the Court said:

> "No reason is stated in the act, and none is presented, to justify a different treatment of delinquent taxes on real estate in Cook County from that in force throughout this State. This act violates section 22 of article 4 and is void."

In *Knopf* v. *The People,* 185 Ill. 20, the Court, in speaking of the effect of Section 22 of Article IV, at page 26, says:

> "As to certain subjects, however, the People, in the fundamental law, made a hard and fast rule, not subject to any condition or exception, prohibiting the enactment of special or local laws. Section 22 of article 4 of the constitution prohibits the General Assembly from passing local or special

> laws in certain enumerated cases. As to those subjects the prohibition is absolute, and not conditional. Among them is, 'incorporating cities, towns or villages, or changing or amending the charter of any town, city or village,' which is violated by section 49. * * * Within the enumerated subjects Cook County cannot be singled out for legislation on the ground that its circumstances and conditions are different from other counties, nor can the city of Chicago be singled out and separated from other cities of the State and made the subject of special legislation."

The act involved in the case last referred to was based upon a classification of 125,000 population.

Speaking of the basis of classification, in *People* v. *Knopf,* 183 Ill., at page 420, the Court said:

> "That the rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and objects to be attained. There must be something, in the nature of things, which in some reasonable degree accounts for the division into classes."

The opinion of the Supreme Court of Illinois says (Tr. 14):

> "The acts assailed by appellant are general laws, and do not purport to be based upon section 34 of article 4, nor to affect only the municipal government of Chicago."

As we believe we have fully established elsewhere, the laws in question and each of them are not general laws, but are local and special, and intended to be available only to the City of Chicago. The pretended classifications employed are transparent and clearly indicate that

none of said laws have or can have any application to any city or village other than Chicago, within any reasonable period following their passage.

But why does the Court take the trouble to call them general laws in view of the fact as the Court in its opinion at the preceding page 13 of the transcript says:

> "Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special. (*Ptacek* v. *Coleman,* 364 Ill. 618; *People* v. *City of Chicago, supra.*) As we recently observed in *City of Chicago* v. *Cook County,* 370 Ill. 301, 'The net result of section 34 of article 4 is that so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local and special laws and that of uniformity, and imposed another, that of a referendum."

From the foregoing, it necessarily follows that even if the laws in question and each of them were general laws, they must still be submitted to a referendum before they could take effect in the City of Chicago. They were not submitted to a referendum and have not nor have any or either of them taken effect in the City of Chicago, and they do not nor do any or either of them constitute authority to the City of Chicago to make any of the tax levies here complained of.

Following the language of the Supreme Court Opinion (Tr. 14), which we first quoted, we find the following:

> "Manifestly, the General Assembly may enact legislative legislation affecting the city of Chicago other than by statute based upon section 34 of article 4."

This statement is a truism provided said legislation does not pertain to the local municipal government of

the City of Chicago. Likewise, it is utterly foreign to any of the issues involved in this case.

No doubt, many laws may be enacted affecting Chicago that need not be submitted to a referendum. Conversely, no law may be enacted affecting the local municipal government of the City of Chicago and become effective in the City of Chicago, until it is approved by a majority of the legal voters of the City of Chicago.

The unqualified fact is that Section 34 of Article IV clearly sets forth as one of the powers of municipal government to be granted by the General Assembly to the City of Chicago, the power to "provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes," (Petition herein, page 3) and such is the decision of the state court in *City* v. *Reeves,* 220 Ill. 274, at page 282.

All of the acts here involved pertain to taxation for corporate purposes, and they are, therefore, based upon Section 34 of Article IV, even if contrary to the fact it serves a purpose to term them general laws. Under the provision of Section 34, the legislature may enact laws, local, special or general, to establish a system of local municipal government for the City of Chicago, but such laws do not take effect in the City of Chicago until approved by a majority of the voters of the City.

What is said in the opinion (Tr. 14) concerning the Municipal Court of the City of Chicago throws no light upon the questions involved in this case, and serves only to create confusion.

The opinion says (Tr. 15):

> "It does not follow as appellant urges that every act remotely affecting the municipal government in the city of Chicago must likewise be submitted to a referendum."

We have not urged and do not now urge any such ridiculous proposition.

The opinion concludes in part:

> "We hold that the amendment to the constitution, section 34 of article 4, is not a bar to the challenged statutes, and that the General Assembly was empowered to enact them." * * *

Passing, for the moment, the question of the necessity for a provision in each of the acts in question, requiring their submission to a referendum before they become effective in the City of Chicago, and treating the acts in their true light as laws intended to apply to the City of Chicago only, Section 34 of Article IV authorizes the acts here involved and each of them, but that alone does not give them effect in the City of Chicago.

We submit that there is no lawful viewpoint from which the acts in question can be considered as being in effect in the City of Chicago and therefore the tax levies in question and each of them are without due process of law, violate the Fourteenth Amendment to the Federal Constitution and that said levies are void.

III.

While legislative classifications are permissible under the Fourteenth Amendment to the Federal Constitution, they will not be tolerated unless there is a real necessity therefor. They must be reasonable and just. There must be a natural relationship between the classification made and the object sought to be accomplished by the legislation based upon the classification. They must not be arbitrary.

Any classification that is arbitrary and capricious is lacking in due process and violates the Fourteenth Amendment of the Federal Constitution. Mere differences constitute no basis for classification.

In *Louisville Gas Company* v. *Coleman,* 277 U. S. 32, this Court, in speaking, at page 37, concerning the right of a state to classify for the purposes of taxation, says:

> "the power of the state to classify for purposes of taxation is of wide range and flexibility, provided, always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Royster Guano Co.* v. *Virginia,* 253 U. S. 412, 415; *Air-Way Corp.* v. *Day,* 266 U. S. 71, 85; *Schlesinger* v. *Wisconsin,* 270 U. S. 230, 240. That is to say, *mere* difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' *Gulf, etc.* v. *Ellis,* 165 U. S. 150, 155."

Speaking first of the three Pension Acts, we submit that legitimate pension acts are based upon long and faithful service and not upon population, and that there is no necessity on the one hand, or reason on the other, why a municipal employe of a city of 200,000 should receive a pension any more than there is why one of 100,000, 75,000, 50,000 or 25,000 should receive a pension, and that, therefore, a classification on the basis of 200,000 for pension funds is purely arbitrary and capricious.

We submit further that there is no natural relationship between a population of 200,000 and the payment by the municipality of such population of a pension to its employe or any class of them.

Other cases bearing upon this subject, are:

Magoun v. *Illinois Trust and Savings Bank,* 170 U. S. 283, 293.

Truax v. *Corrigan,* 257 U. S. 312.

Southern Railway Company v. *Greene,* 216 U. S. 400, 417.

Gulf, Colorado & Santa Fe Railway v. *Ellis,* 165 U. S. 155.

In this last mentioned case, the Court, at page 155, said:

> "These are distinctions which do not furnish any proper basis for attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the class is proposed, and can never be made arbitrary and without any such basis."

And at page 156, the Court said:

> "We conclude, upon a review of the cases referred to above, that, whether a statute be public or private, general or special, in form, if it attempts to create distinctions and classifications, between the citizens of this state, the basis of such classification must be natural and not arbitrary."

And, again, at page 159, the Court said:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

Speaking further at page 165, the Court said:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases, it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection. Tested by these principles the statute in controversy cannot be sustained."

Another case bearing upon this subject is, *Quaker City Cab Co.* v. *Pennsylvania,* 277 U. S. 389, where the

Court dealt with a situation quite like that here presented in principle, and in speaking of the Fourteenth Amendment, at page 400, said:

> "The equal protection clause does not detract from the right of the State justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' *Power Co.* v. *Saunders,* 274 U. S. 490, 493. * * *
>
> But, in any event, a characterization of the tax by the state court is not binding here. * * * No doubt there are situations in which, as appears in *Cudahy Packing Co.* v. *Minnesota,* 246 U. S. 450, and other cases, a percentage of gross earnings may be taken as a tax on property used in the business and properly may be deemed not to be a tax or burden on such earnings. But the practical operation of the section is to be regarded, and it is to be dealt with according to its effect. *Frick* v. *Pennsylvania,* 268 U. S. 473. *Panhandle Oil Co.* v. *Mississippi, ante,* p. 218."

Coming now to the Tax Levy Act, we note that it is based upon a population of 150,000 or more. The act authorizes a municipality of the required population to levy taxes at the rate of 1.29 per centum or for the sum of $37,000,000, whichever may be the greater.

Had the act stopped at granting a power to tax at a rate of 1.29 per centum, it would have presented a case entirely different from that in fact presented by the alternative authority of levying a tax for the flat sum of $37,000,000.

We respectfully submit that the act now under consideration gives to a city of 150,000 population power to levy the same amount in taxes that it gives to a city of

3,390,000 population. We submit that a mere statement of the proposition impels its re[illegible]tation.

Clearly, there can be no pos[illegible]ible relationship between a municipality of 150,000 population and the power to raise $37,000,000 annually in taxes. Had the act stopped at the rate of 1.29 per centum, the relationship of the rate to the assessed valuation of municipalities of varying populations would probably produce results that would be reasonable.

There must necessarily be some close relationship between population and the assessed valuation, but when we eliminate the assessed valuation from the equation, and involve only the two elements of a population of 150,000 or more and $37,000,000 in taxes, the classification becomes purely arbitrary and capricious, and is repugnant to the due process provision of the Fourteenth Amendment.

The General Assembly could, by virtue of Section 34 of Article IV of the State Constitution, have granted to the City of Chicago by name the powers embodied in the act now under discussion. That act, however, would not be effective in the City of Chicago until approved by a majority of the legal voters of the City of Chicago.

An act consolidating with the City of Chicago other taxing bodies and granting to the city upon such consolidation, a rate of 1.35 per centum, was passed and submitted to a referendum in 1916, and was rejected by the voters.

State Bar Association Revised Statutes of 1939, page 419.

Although the act provided that if rejected, it might be again submitted, it was not again submitted to the voters.

This may account for the legislature designating the

City of Chicago by description instead of by name in the hope that the public and the courts could be deceived by the camouflage and led to believe that the act was a legitimate classification for the purposes of taxation.

No city other than Chicago will have a population of 200,000 within twenty-five years (Tr. 8).

This Tax Levy Act provides that said additional taxes for 1934 and 1935 may be levied at any time subsequent to July 1st, 1935, and prior to September 1st, 1935. Necessarily, no municipality could come into this alleged class of 150,000 or more population at any time after Sepetmber 1, 1935, and enjoy the privileges of the act with reference to 1934 and 1935, tax levies of $31,925,000 and $36,000,000, respectively. Said classification is, therefore, a delusion and a snare, It is not real or genuine, but is wholly unfounded and without any reasonable basis upon which to predicate it.

This is made all the more apparent when we observe that a city of a hypothetical population of 150,000, and Chicago of over 3,000,000 population are put on the same plane in so far as the amount of taxes, which they are empowered to levy is concerned. Both are empowered to levy $37,000,000 for 1936 and annually thereafter.

By the same population basis of comparison, if $37,000,000 will adequtaely care for the corporate needs of Chicago, it would take care of twenty cities of a population of 150,000 each.

By an amendment to the act in question in 1939, all possibility of any city or village coming into the class was again forever foreclosed by said amendment increasing the population, made a prerequisite to membership in the class, to 500,000. If no city, aside from Chicago, will have a population of 200,000 within tewnty-five years, it seems reasonable to say that none will have a

population of 500,000 within one hundred and twenty-five years. This is particularly true in view of the fact that no city, other than Chicago, is so fortuitously situated as to have an unusual accretion to its population.

In *Southern Railway Co.* v. *Greene,* 216 U. S. 400, the Court, at page 412, says:

> "The federal constitution, it is only elementary to say, is the supreme law of the land, and all its applicable provisions are binding upon all within the territory of the United States. Whenever its protection is invoked, the courts of the United States, both state and federal, are bound to see that rights guaranteed by the federal constitution are not violated by legislation of the state."

It will be noted that the state court in its opinion wholly failed to pass upon the proposition that the acts in question and each of them violated the Fourteenth Amendment to the Federal Constitution. What is said by this Court in that connection may, therefore, be of interest.

And in speaking on the subject of classification, this Court in the same case at page 417, said:

> *"While reasonable classification is permitted, without doing* violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification. *Gulf, Colorado & Santa Fe Ry.* v. *Ellis,* 165 U. S. 150, 155, 165; *Cotting* v. *Kansas City Stock Yards Co.,* 183 U. S. 79; *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 559."

We submit that each and all of the classifications here involved are shown upon their faces to be arbitrary.

However, there is evidence (Tr. 8) that no municipality in Illinois, aside from Chicago, will have a population of 200,000 within the next twenty-five years.

In *Borden's Co.* v. *Baldwin,* 293 U. S. 194, this Court, at page 210, says:

> "Still, the statute may show on its face that the classification is arbitrary (*Smith* v. *Cahoon,* 283 U. S. 553, 567) or they may appear by facts admitted or proved. *Southern Ry. Co.* v. *Greene,* 216 U. S. 400, 417; *Air-Way Electric Corp.* v. *Day,* 236 U. S. 71, 85; *Concordia Insurance Co.* v. *Illinois,* 292 U. S. 535, 549."

We submit that each and all of the classifications here involved fail to comply with the standards of classification prescribed by this Court, they render each and all of the acts in question repugnant to the Fourteenth Amendment to the Federal Constitution and void; that as the said acts are the sole basis for the tax levies complained of it leaves said levies without authority and void.

Par. 123, Chap. 24, Ill. State Bar Statutes, 1939.
Par. 496, Chap. 46, Ill. State Bar Statutes 1939.
Par. 505, Chap. 37, Ill. State Bar Statutes 1939.
Par. 1108, Chap. 24, Ill. State Bar Statutes 1939.

IV.

Section 34 of Article IV is a grant of power to the General Assembly to in turn grant powers to the City of Chicago constituting a scheme or charter of local municipal government. Under the well established rule of construction that the expression of one thing is to the exclusion of all others, said Section 34 embodies all of the power that the legislature possesses to legislate concerning the powers of local municipal government. Under this constitutional grant to the General Assembly, taxation is expressly made a power of local municipal government. Consequently, inasmuch as each of the acts in question involves the power of taxation for the purposes of local municipal government of Chicago, none of said acts can take effect until approved by a majority of the legal voters of said city.

That Section 34 of Article IV is a grant of power is so unqualifiedly apparent as not to admit of dispute. The initial language of that section is,

> *"The General Assembly shall have power,* subject to the conditions and limitations hereinafter contained to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago."

That Section 34 is a grant of power to the General Assembly is determined in *City* v. *Reeves,* 220 Ill. 274, where, at page 298, the Court said:

> "It is clear that the amendment of 1904 embraces but one subject, *viz.,* the establishment of local municipal government in the city of Chicago, and as the amendment was *designed to confer legislative power upon the General Assembly to establish local municipal government in the city of Chicago,* we think the amendment was properly proposed to article 4," etc.

The first part of the language last above quoted has the force of determining that the various subjects set forth in Section 34 under several numbers must pertain to local municipal government, because, as the Court above said, Section 34 embraces but one subject, the establishment of local municipal government.

It results that when by the third enumeration in Section 34, it is set forth, that the General Assembly may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes, it irretrievably binds to the local municipal government the power to levy and collect taxes. This fact is emphasized by a later part of the opinion where, at page 302, the Court said:

> "It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain within the city local municipal government."

The state court in the opinion here involved does not utter a word in refutation of what is said in the case last cited, leaving what is said in that case as the established law of Illinois, which has existed for about thirty-five years.

In *People* v. *City,* 310 Ill. 534, at page 539, the Court said:

> "The amendment of the constitution (section 34 of article 4) *authorized* the General Assembly to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago."

Here again, we have it clearly stated that Section 34 of Article IV is an authorization or grant of power to the General Assembly to provide a scheme or charter of local municipal government for the City of Chicago, and in the same opinion, the proposition that Section 34 confers or grants power to the General Assembly is emphasized at page 540, where it is said:

> "The intention of the amendment is manifestly that the *powers conferred by it on the General Assembly* shall be exercised subject to the right of the people of the city to reject the result. The General Assembly has not the final power, but its legislation, so far as it is based on this amendment, is subject to a veto by an adverse popular vote."

In speaking of the adoption of Section 34 of Article IV, the Court, in *Swigart* v. *City of Chicago,* 223 Ill. 371, at page 374, says:

> "it was adopted by the people, the effect of which *was to permit the legislature* to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago."

Again, we have it pointed out that Section 34 is a permit or authority granted to the legislature, and that said Section 34 of Article IV is a grant by the people, acting through that section, to the General Assembly to establish local municipal government of the City of Chicago. This is emphasized in *People* v. *Gill,* 358 Ill. 261, where, at page 264, that Court said:

> "In passing upon the act in question, we must bear in mind that section 34 of article 4, being the constitutional amendment of 1904, *empowered the legislature* to pass laws establishing a local municipal government in and for the city of Chicago, and with the consent of the voters of the city, to pass any laws it deems requisite, limited only by the restrictions imposed by such amendment."

This same thought is further emphasized by what the Court said in *Ptacek* v. *Coleman,* 364 Ill. 618, where, in speaking of Section 34, the Court, at page 620, says:

> "It provides that the *General Assembly shall have power,* subject to the conditions and limitations therein contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the city of Chicago";

The fact that Section 34 is a grant of power to the General Assembly is again stated in the recent case of *City* v. *County of Cook,* 370 Ill. 301, where, in speaking of Section 34, the Court at page 303, said:

> "it is provided that the *General Assembly shall have power,* subject to the conditions and limitations therein contained to pass any law (local, special or general), providing a scheme or charter of local municipal government for the territory embraced within the limits of the city of Chicago."

We thus observe that the Court defines Section 34 as a grant of power to the General Assembly concerning local municipal government of the City of Chicago.

That the powers granted by Section 34 to the General Assembly are exclusive is clearly stated in *People* v. *Wiersema State Bank,* 361 Ill. 75, where, at page 85, the Court says:

> "The rule that the expression of one thing or one mode of action in an enactment excludes any other, even though there may be no negative words prohibiting it, has been the settled law of this state since 1872. *Sammis* v. *Clark,* 13 Ill. 544; *Vestal Co.* v. *Robertson,* 277 *id.* 425."

And in *Vestal Co.* v. *Robertson,* 277 Ill. 425, the same proposition is announced in slightly different words as follows:

> "The doctrine was also annuonced and approved in the case of *Diversey* v. *Smith, supra,* that an af-

> firmative statute introductive of a new law which directs a thing to be done in a certain manner means that such thing shall not be done in any other manner, even though there be no negative words prohibiting it."

It is therefore by virtue of the power conferred on the General Assembly by Section 34 of Article IV that each and all of the acts here involved were passed. They are therefore based on said Section 34 of Article IV and being so based they do not take effect in the City of Chicago until they are approved by a majority of the legal voters in the City of Chicago.

It results that inasmuch as the four acts in question pertain to taxation for the purpose of enabling the City of Chicago to conduct its local municipal government, said acts and each of them are based upon Section 34 of Article 4.

It is also to be noted that inasmuch as Section 34 grants to the General Assembly power to pass laws granting powers to the City of Chicago concerning its local municipal government, including the all essential power of taxation, the powers expressed in Section 34 are exclusive. The consequence is that the true effect and meaning of Section 34 is that the General Assembly shall have the powers to legislate concerning the local municipal government of the City of Chicago therein expressed, and shall have no other powers so far as legislating concerning the local municipal government of the City of Chicago is concerned.

V.

The acts in question and each of them violate Section 34 of Article IV of the State Constitution in that they do not nor do any or either of them embody a requirement that the act in each instance be submitted to a referendum and receive a majority of the votes of the legal voters of the City of Chicago before it takes effect in the City of Chicago.

As we view it, the establishment of the proposition announced in the foregoing caption is of importance only in one particular. If the proposition is correct, it means that each of the acts are void. On the other hand, if it be held that the proposition is not correct, it would mean that each of the acts might still be submitted to a referendum and could become effective in the City of Chicago by a majority vote of all the legal voters in the city, but the determination of these questions is not essential to voiding the levies as it is herein contended they should be, because none of the acts have been submitted to a referendum, and under the unequivocal provisions of Sction 34, they did not take effect in the City of Chicago, and do not afford the basis for the tax levies here involved in so far as complained of. Said levies are, therefore, made without due process of law in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution and are void.

So far as our research discloses to us, there is but one case that passes on the proposition stated in the foregoing caption, that is, *People* v. *City of Chicago,* 310 Ill. 534, where, at page 540, the Court said:

> "Therefore no amendment of the Municipal Court act can take effect until it shall have been assented to by a majority of the legal voters of the city voting at a general, municipal or special election. The General Assembly acted upon this hypothesis for

many years and attached the requirement of a referendum to all proposed amendments until 1919. Amendments were submitted to the people, voted on and adopted in 1907 (Laws of 1907, p. 225,) and in 1917. (Laws of 1917, pp. 329, 333.) Other amendments were submitted, voted on and defeated in 1911, pp. 255, 260,) and in 1915; (Laws of 1915, p. 360,) and in 1913 a general revision of the act was passed by the legislature, approved by the Governor and submitted to the people but was defeated. (Laws of 1913, p. 212.) *In 1919, 1921 and 1923 amendments were passed by the General Assembly omitting the formality of a referendum* (Laws of 1919, pp. 409, 411; Laws of 1921, p. 393; Laws of 1923, pp. 307, 310.) *These acts of the General Assembly are ineffective. In passing them it assumed an authority expressly denied to it by the amendment to the constitution. The intention of the amendment is manifestly that the powers conferred by it on the General Assembly shall be exercised subject to the right of the people of the city to reject the result. The General Assembly has not the final power, but its legislation, so far as it is based on this amendment, is subject to a veto by an adverse popular vote."*

We therefore respectfully submit that inasmuch as the acts in question and each of them do not provide for a referendum and were not submitted to or approved by a referendum vote they for both reasons violate Section 34 of Article IV, and the acts themselves are void and do not constitute due process as required by Section 1 of the Fourteenth Amendment to the Federal Constitution.

VI.

This case involves the violation of Section 1 of Article XIV, of the Federal Constitution. The facts of the case are wholly undisputed. It follows that the rule stated by this Court in Traux v. Corrigan, 257 U. S. 312, at page 324 pertains. The rule there announced is, this Court "as an incident of its power to determine whether a federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here. * * * In view of these decisions, and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by demurerr, violates the Federal Constitution, this Court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the State Supreme Court in this regard."

As appears from the Statement of Facts embodied in the petition the facts involved here are undisputed. The State Court gave no heed to the federal question presented and evaded passing squarely upon some of the state questions, and concluded its opinion with the arbitrary and capricious statement that Section 34 of Article IV did not prohibit the enactment of the statutes here involved.

The State Court opinion did not pass upon the question whether even if the four statutes involved were legally passed, they still afforded no basis for the levies in question, because such statutes were not nor were any or either of them approved by a majority of the legal voters of the City of Chicago as required by Section 34 of Article IV, and, consequently, did not take

effect in the City of Chicago, leaving each of the levies complained of without any authority therefor, and consequently without due process of law and void because in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Other cases in keeping with *Traux* v. *Corrigan, supra,* are:

Great Northern Railway Co. v. *Washington,* 300 U. S. 154, 166.

Johnson Oil Co. v. *Oklahoma,* 290 U. S. 158.

Beidler v. *South Carolina Tax Commission,* 282 U. S. 1, 8.

Moffitt v. *Kelly,* 218 U. S. 400, 404.

In a later case—*Lawrence, et al.* v. *State Tax Commission of Mississippi,* 286 U. S. 276, this Court, at page 282, said:

> "But the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked. Even though the claimed constitutional protection be denied on non-federal grounds, it is the province of this court to inquire whether the decision of the court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus avoided. See *Ward* v. *Love County,* 253 U. S. 17, 22; *Enterprise Irrigation District* v. *Canal,* 243 U. S. 157, 164; *Fox River Paper Co.* v. *Railroad Commission,* 274 U. S. 651, 655."

We submit that it is plain to be seen that petitioner's rights were not by the State Court's opinion judicially determined, but on the other hand the case was disposed of by an arbitrary and capricious pronouncement in conflict with the legal principles announced in the opinion itself, and in derogation of the unequivocal provisions of Section 34 of Article IV of the Illinois Constitution.

As we have noted, the State Court evaded a decision upon the federal question presented to it and now presented to this Court.

In the case last referred to, this Court treats State Court action as follows:

> "If the Constitution exacts a uniform application of this tax on appellant and his competitors, his constitutional rights are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it. See *Greene* v. *Louisville & Interurban R. Co.*, 244 U. S. 499, 508, 512, *et seq.*, *Smith* v. *Cahoon*, 283 U. S. 553, 564, for in either case the inequality complained of is left undisturbed by the state court whose jurisdiction to remove it was really invoked. * * * We therefore conclude that the purported non-federal ground put forth by the state court for its refusal to decide the constitutional question was unsubstantial and illusory, and that the appellant may invoke the jurisdiction of this court to decide the question."

In *Ward* v. *Love County*, 253 U. S. 17, this Court speaks of a situation quite similar in principle to that here involved, and at page 22, said:

> "The right to the examination was a federal right, and was specially set up and claimed as such in the petition. Whether the right was denied, or not given due recognition, by the Supreme Court is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way. It, therefore, is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forth non-federal grounds of decision that were without any fair or substantial support. *Union Pacific Railroad Co.* v. *Public Service Commission*, 248 U. S. 67; *Leathe* v. *Thomas*, 207 U. S. 93, 99; *Vandalia Railroad Co.* v. *South Bend*, *ibid*, 359, 367; *Gaar, Scott & Co.* v. *Shannon*, 223 U. S. 468; *Cres-*

will v. *Knights of Pythias,* 225 U. S. 246, 261; *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 164. And see *Jefferson Branch Bank* v. *Skelly,* 1 Black. 436, 443; *Huntington* v. *Attrill,* 146 U. S. 657, 683, 684; *Boyd* v. *Thayer,* 143 U. S. 135, 180; *Carter* v. *Texas,* 177 U. S. 442, 447. *Of course, if non-federal grounds, plainly untenable, may be thus put forth successfully, our power to review easily may be avoided. Terre Haute & Indianapolis R. R. Co.* v. *Indiana,* 194 U. S. 579, 589."

To much the same effect are:

Enterprise Irrigation District v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 164.

Fox River Paper Co. v. *R. R. Commission,* 274 U. S. 651, 655.

Iowa-Des Moines v. *Bennett,* 284 U. S. 239, 246.

Louisville Gas Co. v. *Coleman,* 277 U. S. 32, 37.

As this Court will have heretofore noted, the State Court in its opinion brands the acts in question general laws. This Court, in speaking of a State Court's characterization, in *Schuylkill Trust Co.* v. *Pennsylvania,* 296 U. S. 113, at page 119, says:

> "We give great weight to the characterization of a tax, or the interpretation of a state law, emanating from the highest court of the state, but where a federal question is involved, we are not bound by the label attached to the tax or the character ascribed to the law. We must determine for ourselves the true nature of the tax by ascertaining its operation and effect. *Senior* v. *Braden,* 295 U. S. 422, 429."

Senior v. *Braden,* 295 U. S. 422, 429, is in accord with the case last cited.

The State Court in its opinion (Tr. 14) says:

> "The acts assailed by the appellant are general laws, and do not purport to be based upon section

34 of article 4 nor to affect *only* the municipal government of Chicago."

The State Court is evidently unmindful of the rule often announced by this Court to the effect that it is not what an act purports to be or the form it may take, but conversely what it is in fact, or what effect it really has.

In *Stewart Dry Goods Co.* v. *Lewis,* 294 U. S. 550, the Court, at page 555, states the rule of construction thus:

> "In resolving the issue, we are not concluded by the name or description of the tax as found in the act; our duty is to ascertain its nature and effect. *Galveston, H. & S. A. Ry. Co.* v. *Texas,* 210 U. S. 217, 227; *Choctow, O. & G. R. Co.* v. *Harrison,* 235 U. S. 292, 298; *Crew Levick Co.* v. *Pennsylvania,* 245 U. S. 292, 294; *Shaffer* v. *Carter,* 252 U. S. 37, 55; *Dawson* v. *Kentucky Distilleries Co.,* 255 U. S. 346, 348. 'The substance and not shadow determines the validity of the exercise of the power.' *Postal Telegraph Co.* v. *Adams,* 155 U. S. 688, 698. The act does not impose an income or profits tax, or a license tax, is not an inspection measure, or a police regulation."

This Court in several instances has had occasion to remark that any pretense or masquerade will be disregarded, and the true purpose of the statute ascertained, by it.

> *Smith* v. *St. Louis,* 181 U. S. 248, 57.
> *Henderson* v. *Mayor,* 92 U. S. 259.
> *Chy Lung* v. *Freeman,* 92 U. S. 275.

A salutary rule is announced by this Court in *Galveston* v. *Texas,* 210 U. S. 217, 227, as follows:

> "Neither the state courts nor the legislature, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect."

In *Western* v. *Kansas,* 216 U. S., this Court, at page 27, says:

> "In *Henderson* v. *Mayor,* 92 U. S. 259, 268, which involved the question whether a statute of New York was in any real sense a regulation of commerce with foreign nations, the court said that in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect. In *Mugler* v. *Kansas,* 123 U. S. 623, 661, it was said that the courts in determining whether a statute is consistent with the fundamental law must not feel themselves 'bound by mere form nor are they to be misled by mere pretenses. They are at liberty—indeed under a solemn duty—to look at the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority.' "

And, again, stated the proposition in the language:

> "The substance, not the shadow determines the validity of the exercise of power. *Looney* v. *Crane,* 245 U. S. at 189; *Postal* v. *Adams,* 155 U. S. 98."

We respectfully submit that both the legislation and the state court opinion here involved, constitute flagrant violations of Section I of the Fourteenth Amendment to the Federal Constitution, and that a case calling more appealingly for the intervention of this Court to protect the rights of an American citizen guaranteed to him by the Federal Constitution, and to maintain a constitutional form of government is rarely presented for the consideration of this Court.

VII.

Each of the acts here involved assume to make classifications for certain specific purposes as distinguished from classifying municipalities generally, thereby rendering said acts, and each of them special, in violation of Section 22 of Article IV, if they are not saved by bringing the acts within the purview of Section 34 of Article IV.

The pension acts classify for the sole purpose of the pension therein provided for in each instance.

The Tax Levy Act assumes to classify for the sole purpose of authorizing the levy of the tax therein provided for.

None of the acts make a classification of municipalities generally. Each of the acts is, therefore, special, in violation of Section 22 of Article IV.

Anderson v. *City,* 42 N. J. L. 486.
D'Arcy v. *San Jose,* 104 Cal. 642.
Ex Parte Granbonini, 117 Cal. 573.
Raner v. *Williams,* 118 Cal. 401.
Denman v. *Broderick,* 111 Cal. 96.
Mulloy v. *Board,* 246 Mich. 632.
Andrews v. *State,* 104 Ohio State 384.
Perkins v. *Philadelphia,* 145 Pa. St. 554.

If the acts are not approved by a majority of the legal voters of the City of Chicago in compliance with Section 34 of Article IV, they have no effect in the City of Chicago, and the tax levies made pursuant to them do not constitute due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

Conclusion.

We believe that we have established from what has gone before,

(1) That the General Assembly has no power to place the City of Chicago in any classification.

(2) That the most that can be said of each of the four acts here involved is that they designate the City of Chicago by description as the sole city to be effected thereby.

(3) That assuming the proposition in (2) *supra* to be correct and passing the proposition that each of the acts must provide for a referendum, each of them is authorized by Section 34 of Article IV, but none of them have been approved by a majority of the legal voters of the City of Chicago and therefore none of said acts have taken effect in the City of Chicago, and none of them constitutes the basis for any of the levies here involved. Each of the acts may, however, be submitted to a referendum and, if approved, by a majority of the legal voters, then take effect in the City of Chicago.

(4) That the General Assembly has no power to enact any laws pertaining to the local municipal government of the City of Chicago, except that embodied in Section 34 of Article IV of the Constitution. That section is the sole measure of the General Assembly's authority concerning the local municipal government of the City of Chicago.

(5) That the Pension Acts are each based upon a pretended classification of 200,000 or more population. No city in the state, except Chicago, has a population of over 105,000. No city, other than Chicago, will have a population of 200,000 within the next twenty-five years

at the normal rate of increase in population. Said pretended classifications are, therefore, not real or reasonable and are not based upon a real and substantial difference having a reasonable relation to the object of the particular legislation, and are wholly arbitrary and capricious. Said pretended classifications bear no just relationship to the object sought to be accomplished by the acts in question, in that there is no relationship between population and the necessity for pensions. Pensions in municipalities of 150,000, 50,000, or 25,000 are as necessary and appropriate as in a municipality of 200,000.

(6) That the pretended classification embodied in the Tax Levy Act, that of a population of 150,000, is not based on a real and substantial difference having a reasonable relation to the object of the particular legislation which is, a grant of power to make an annual tax levy of $37,000,000, as $37,000,000 is at least twenty times as much revenue as a municipality of 150,000 would have any real occasion to expend in the honest conduct of government. Said pretended classification is therefore unreasonable, arbitrary, capricious, unnecessary and void.

(7) That each of the acts herein involved is local and is also special, and as such violates Section 22 of Article IV of the State Constitution, unless they can be said to have been passed by virtue of the power embodied in Section 34 of Article IV, in which case they are saved from the inhibition of Section 22 by said Section 34.

(8) That for the reasons hereinbefore in this Conclusion set forth and each of them the acts here involved and each of them are lacking in due process of law and violate Section 1 of the Fourteenth Amendment to the Federal Constitution and are, therefore, void.

(9) That inasmuch as the acts here involved and each

of them are void, they constitute no authority to the City of Chicago to make the tax levies in question or any or either of them, thereby rendering each and all of said levies without authority, without due process of law, and void.

(10) That for the reasons hereinbefore set forth, and because the State Court did not make any ruling on the federal question here involved and did not make any ruling on the controlling question whether each of the acts in question must be submitted to a referendum before they take effect in the City of Chicago, this Court has plenary jurisdiction to determine whether the acts in question and the tax levies in question contravene the provisions of Section 1 of the Fourteenth Amendment to the Federal Constitution.

For many years the people of Chicago placed their dependence upon Section 34 of Article IV and numerous decisions of the Supreme Court of Illinois construing that section, and were thereby led to believe that by said section they were guaranteed local home rule in all affairs pertaining to their local municipal government.

The General Assembly by the four acts here involved seek to deprive the people of Chicago of the right given by Section 34 to approve or reject all acts passed by the General Assembly pertaining to local municipal government. It was strongly urged in the Supreme Court of Illinois that these acts violate not only Section 34 of Article IV of the State Constitution, but as well that they do not constitute due process of law, and, therefore, violate the Federal Constitution.

The State Court evaded passing on either of these questions. The importance of these questions to over 3,000,000 of people is clearly of prime importance.

This Court is vested with the power and by the Con-

stitution of the United States has imposed upon it the duty to determine whether all circumstances considered, the acts in question conform to or violate the requirements of the Federal Constitution concerning due process. The petition has invoked the exercise of this power by this Court and again urgently asks this Court to order that the writ of certiorari issue, and that upon a hearing the judgments of the Supreme Court of Illinois and that of the County Court of Cook County be reversed and the cause remanded with directions to sustain the objections filed to the levies in question, on the ground that they do not nor do any or either of them constitute due process of law.

Respectfully submitted,

CHARLES M. HAFT,
Attorney for Petitioner.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 936

WILLIAM DAVIES CO., INC.,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

THOMAS J. COURTNEY,
State's Attorney of Cook County, Illinois.
BARNET HODES,
Corporation Counsel of the City of Chicago.
Attorneys for Respondent.

JOSEPH F. GROSSMAN,
First Assistant Corporation Counsel,
OTHO S. FASIG,
J. HERZL SEGAL,
Assistant Corporation Counsel,
Of Counsel.

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Summary of Argument i

I. The only real point of any substance urged in this case is that the statutes under attack are void because not submitted to a referendum of the voters of the City of Chicago in conformity with the provisions of Section 34 of Article IV of the Illinois Constitution. The decision of the Supreme Court of the State of Illinois holding that the statutes do not come within the purview of that provision of the state Constitution is conclusive upon this court and presents no Federal question. 2

II. The contention of the petitioner that the acts violate the Fourteenth Amendment to the Federal Constitution was not adequately preserved in the state courts because although it was asserted it was not argued. Assuming that the point was properly preserved, it is without substantial merit because the classification of municipalities on the basis of population is reasonable and bears a proper relation to the subject matter of taxation and pension funds. 3-6

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 936

WILLIAM DAVIES CO., INC.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

MAY IT PLEASE THE COURT:

The respondent, the People of the State of Illinois, *ex rel.* John L. Toman, county treasurer and *ex-officio* county collector of Cook County, Illinois, opposes the petition for writ of certiorari on the following grounds:

I.

The only substantial question in this case involves a construction of the Constitution of the State of Illinois and this court is bound by the decision of the Supreme Court of Illinois that the challenged statutes are not repugnant to the Illinois Constitution.

Even a cursory examination of the petition for certiorari and the brief in support thereof discloses that the real argument made by the petitioner is that the statutes in question are repugnant to Section 34 of Article IV of the Illinois Constitution for the reason that none of the statutes were submitted for approval by the electors of the City of Chicago. This point was the only point urged before and considered by the State Supreme Court. That court held that the statutes under consideration did not come within the purview of Section 34 of Article IV of the Illinois Constitution, and consequently no referendum was required in order to make them effective. This question is purely one of local law and presents no Federal question. It is well settled that decisions of the court of last resort of the State are conclusive on this court as to the construction of the State Constitution and as to the validity of State statutes thereunder. This court accordingly cannot entertain this petition for writ of certiorari because what it basically seeks to obtain a review upon is the question of whether or not the Illinois Constitution requires a referendum upon the statutes under attack.

Louisville Gas Co. v. Coleman, 277 U. S. 32, 36;
Merchants Bank v. Pennsylvania, 167 U. S. 461, 462;
Bucher v. Cheshire Railroad Company, 125 U. S. 555, 582, 583;
Coombs v. *Getz,* 285 U. S. 434, 441;
Glen v. *Field Packing Company,* 290 U. S. 177, 178.

II.

The contention that the statutes violate Section 1 of the Fourteenth Amendment of the Federal Constitution was suggested but not argued in the State Court is asserted but not argued in this court, and is without substantial merit.

As we have heretofore stated, the only real argument made by petitioner is that the statutes violate the provisions of the State Constitution. The assertion that the statutes violate the Fourteenth Amendment is not argued seriously. In fact, as appear from pages 40 and 41 of the brief in support of the petition for certiorari the theory of the petitioner seems to be that "such statutes were not nor were any or either of them approved by a majority of the legal voters of the City of Chicago as required by Section 34 of Article IV, and, consequently, [are] * * * without due process of law and void because in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution." The supposed violation of the Fourteenth Amendment contended for by appellant appears to rest ultimately upon the supposed violation of the State Constitution.

It may well be questioned whether petitioner has preserved its rights to argue the alleged Federal question. The record does not contain the principal brief of the petitioner which it filed in the State court. The abstract filed in that court shows that objection was made to the statutes on the ground, among others, that the acts are in violation of the Fourteenth Amendment (Rec. 2-3). The briefs of the petitioner filed in the State court are not in the record and therefore it can be said that it does not affirmatively appear that the Federal question was argued. Actually the point was made, but no argument was made in support

thereof. This statement is adequately supported by the closing paragraph of the opinion of the Supreme Court of Illinois (Rec. 15) which states that appellant does not contend that the acts are vulnerable to any constitutional inhibition other than Section 34 of Article IV. The petition for rehearing which is contained in the record (Rec. 17 to 32) also is barren of any substantial argument in support of the assertion that the acts are in violation of the Fourteenth Amendment to the Federal Constitution. The mere averments that a Federal question is in the case is not sufficient to bestow jurisdiction upon this court in the absence of argument showing that the Federal question is meritorious. (*Goodrich* v. *Ferris,* 214 U. S. 71, 79, 81.)

If it be considered that the basis for the contention that the statutes violate the Fourteenth Amendment is that the classification of municipalities according to population with respect to taxation and pension funds is arbitrary and capricious, we submit that the mere statement of the proposition reveals its lack of merit. The policy of providing charter powers for municipal corporations by special laws or general laws, as the case may be, is governed solely by the States. (*Williams* v. *Eggleston,* 170 U. S. 304, 309-311.) It needs no extended argument to demonstrate that a rational relation exists between population and modes of taxation. We believe that it will suffice to refer this court to *People* v. *Schweitzer,* 369 Ill. 355 wherein the Supreme Court of Illinois sustained the so-called pegged levy statute involved herein against the attack that there was an arbitrary classification because the statute applied only to cities with a population of over 150,000.

The basic fallacy in the arguments of the petitioner on the question of classification is the failure to realize that the sum of $37,000,000 mentioned in the statute is simply a maximum amount. Not all cities and villages of over

150,000 population may levy that maximum amount. Under the Illinois law another limitation comes into play, namely, the corporate needs of the city. As was said in *People* v. *Schweitzer,* 369 Ill. 355, at page 358:

> "It must be remembered that the power to levy taxes is also restricted to the actual and necessary expenses of government."

The fears which petitioner expresses that certain municipalities of population approximating 150,000 would levy a confiscatory amount of $37,000,000, is completely unfounded. If the hypothetical municipality does not require the $37,000,000 to satisfy its corporate needs for the year, the statute in question does not give it the power to levy that amount. The general limitation, aside from the statute, that the levy cannot exceed the corporate needs operates to prevent the consequences which petitioner visualizes.

As to the three pension acts involved, very little need be said to justify the classification of municipalities which may take advantage of that act based upon population. It is a well known economic fact that pension funds cannot operate successfully unless certain minimum contributors thereto are present. Undoubtedly the legislature realized that in the smaller municipalities it woud be futile to set up pension funds because the number of employes who would be available to contribute to the fund would be so small as to render the plan not feasible. In *Hughes* v. *Traeger,* 264 Ill. 612, 618, the Illinois Supreme Court held that a classification of cities by population for municipal employes' pension fund purposes is constitutionally valid. The attack upon the classification of municipalities in the pension acts involved herein is without substantial merit.

Conclusion.

For the foregoing reasons it is respectfully suggested that the petition for writ of certiorari be denied.

Respectfully submitted,

THOMAS J. COURTNEY,
State's Attorney of
Cook County, Illinois,

BARNET HODES,
Corporation Counsel of the
City of Chicago,

Attorneys for Respondent.

JOSEPH F. GROSSMAN,
First Assistant Corporation Counsel,

OTHO S. FASIG,
J. HERZL SEGAL,
Assistant Corporation Counsel,

Of Counsel.

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IN THE

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OCTOBER TERM, 1940

No. 936

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Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR REHEARING

CHARLES M. HAFT,
Attorney for Petitioner.

State Law Printing Company, 173 W. Madison St., Chicago—FRAnklin 5301

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PETITION FOR REHEARING

To the Honorable the Judges of said Court:

Your petitioner, William Davies Co., Inc., respectfully shows unto the Court that on the 9th day of May, A. D. 1941, it delivered to Railway Express Agency at Chicago, Illinois, for transportation to the Clerk of this Court, a reply brief, in which it is firmly believed that numerous errors were pointed out in respondent's brief, and petitioner was seriously disappointed to hear from the Clerk of this Court that said reply brief was not received until after this Court announced a ruling upon the petition herein, denying said petition, which ruling

petitioner verily believes would not have happened if the matters in said reply brief had reached the attention of this Court.

Wherefore petitioner prays a rehearing herein to the end that this Court may reconsider and take note of the following:

1. This Court must have been impressed and misled by what appears at page 2 of respondent's brief where, in speaking of the Supreme Court opinion under review, that brief says:

> "That Court held that the statutes under consideration did not come within the purview of section 34 of article 4 of the Illinois Constitution, and consequently no referendum was required in order to make them effective."

That in making said statement, counsel for respondent makes no reference to any language in said opinion purporting to bear out said statement; that said statement is entirely erroneous as is evidenced by the opinion referred to, which appears at pages 11 to 15, inclusive, of the Transcript of the Record, and to which petitioner respectfully invites the attention of this Court.

That while by way of discussion the opinion refers to numerous matters, the holding of the Court is embodied in next to the last paragraph of the opinion occurring at page 15 of the Transcript, where the Court states its conclusion as follows:

> "We hold that the amendment to the Constitution, section 34 of article 4, is not a bar to the challenged statutes, and that the General Assembly was empowered to enact them unless restrained by other provisions of the Constitution."

That the statement and the opinion as a whole is evasive, arbitrary and capricious, because it evades a clean-cut decision of the three questions repeatedly

pressed upon the attention of that Court for decision, thereby rendering said questions federal, as distinguished from state questions. Those three questions, none of which are decided by the state court in its opinion before this Court, are:

(1) The several acts in question, regarded as valid legislative enactments, are laws pertaining to local municipal government and as such must be approved by the legal voters of Chicago before they take effect in Chicago, as required by section 34 of article 4.

(2) The four levies in question are without authority of law and by reason thereof are without due process of law and consequently violate the Fourteenth Amendment to the Federal Constitution and are void.

(3) The classification embodied in the so-called pegged levy act is not based upon a reasonable ground which bears a just and proper relation to the attempted classification, but is a mere arbitrary selection, and hence violates the Fourteenth Amendment to the Federal Constitution.

That the language of said section 34 of article 4, in part, is:

> "No law based upon this amendment to the Constitution affecting the municipal government of the city of Chicago shall take effect until such law shall be consented to by a majority of the legal voters of said city voting on the question at any election, general, municipal or special;"

That the language last aforesaid was construed by the Supreme Court of Illinois in *People* v. *City,* 310 Ill. 534, at page 540, where it is said:

> "The intention of the amendment is manifestly that the powers conferred by it on the General Assembly shall be exercised subject to the right of the people to reject the result. The General Assem-

> bly has not the final power, but its legislation, so far as is based upon this amendment, is subject to a veto by an adverse popular vote."

That none of said laws were submitted to or approved by a popular vote.

2. That the law of Illinois since the decision in *City* v. *Reeves,* 220 Ill. 274, has been that laws pertaining to the levy of taxes for local municipal government are within the purview of section 34 of article 4 as stated in the opinion last aforesaid, at page 302, as follows:

> "It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain in the city local municipal government."

3. That in speaking of the constitutional force in the City of Chicago of the four acts in question, respondent's brief next says:

> "This question is purely one of local law and presents no federal question."

That this statement is clearly erroneous. That while the necessity for a submission to a referendum of the four acts in question present primarily a state question, the State Court, although urged so to do, did not rule upon it in this case, but did rule upon it in *People* v. *City,* 310 Ill. 534, aforesaid, which is cited approvingly in the State Court Opinion, Transcript, page 13, and it is also a federal question because said four laws being without effect in the City of Chicago, for want of an approving popular vote, renders the four levies, which purport to be based upon them, without due process of law in violation of the Federal Constitution.

4. That apparently this Court did not take note that the so-called pegged levy act assumes to make a classification abhorrent to the Fourteenth Amendment of the Federal Constitution, and hence that the determination of the validity thereof is one primarily for the consideration of this Court. The act assumes to grant to a municipality of 150,000 or more population, authority to make a lump sum levy of $37,000,000.00.

As appears from the record, there is no municipality, aside from Chicago, having a population of over 105,000 inhabitants, whereas Chicago has 3,390,000 inhabitants. Chicago levied a tax at the rate of 1.784012 per cent on an assessed valuation of $2,078,000,000.00.

If there were a municipality of 150,000, upon the basis of the population of Chicago, it would have an assessed valuation of approximately $94,000,000.00, and if the Chicago rate required to produce the $37,000,000.00 were applied to such assessed valuation, it would produce approximately $1,770,000.00. On the other hand, it would require a rate of a little over 39 per cent applied to the $94,000,000.00 assessed valuation to produce the $37,000,000.00 in taxes.

Your Honors must have failed to note that a municipality of 150,000 population has no need for $37,000,000.00 in annual taxes; that there is no real relationship in the case of a city of 150,000 and an assessed valuation of approximately $94,000,000.00 and $37,000,000.00 in taxes. Conversely, the real tax levy need of such 150,000 municipality is approximately $1,770,000.00.

Wherefore, petitioner suggests that if the Court will analyze the figures you will unhesitatingly conclude that the proposed classification is in flagrant violation of the Fourteenth Amendment to the Federal Constitution, under the rules laid down by this Court in decisions, some of which are cited in petitioner's brief beginning at page 26 and extending to and including page 32.

5. That the State Supreme Court evaded passing upon the federal questions thereby imposing upon this Court the duty to decide said federal questions. As this Court has held in *Lawrence* v. *State Tax Commission of Mississippi,* 286 U. S. 276, where this Court said:

> "If the Constitution exacts a uniform application of this tax on appellant and his competitors, his constitutional rights are denied as well by the refusal of the State Court to decide the question as by the erroneous decision of it. * * * We therefore conclude that the purported non-federal ground put forth by the State Court for its refusal to decide the federal question was unsubstantial and illusory, and that the appellant may invoke the jurisdiction of this court to decide the question. * * * Petitioner's constitutional rights are denied as well by the refusal of the State Court to decide the question as by the erroneous decision of it."

6. That this Court may have been erroneously impressed by respondent's Point II, wherein the contention was made that the federal question was not presented to the State Supreme Court. When we refer, however, to pages 2, 3 and 4 of the Transcript of the Record, we note that the federal question was raised as to each and all of the four levies. It is again raised in the errors relied upon, which are a part of the brief filed in the Supreme Court, as those errors appear at page 5 of said brief.

(Petitioner sent along with this reply brief a motion for leave to file a certified copy of the Supreme Court brief, but that it, as well as the reply briefs, arrived after this Court had made its ruling on the petition, and if this petition is granted, petitioner will renew its motion.)

That petitioner has gone much beyond what this Court held to be necessary in *Chicago, Burlington & Quincy Railroad Company* v. *City of Chicago,* 166 U. S. 226,

where it seemed that the only manner in which the federal constitutional question was raised was in a motion for a new trial where, among the grounds relied upon, were certain matters alleged to constitute a violation of the Fourteenth Amendment to the Federal Constitution requiring due process of law.

This Court, in passing upon the sufficiency of that manner of raising the question, at page 231, said:

> "When the trial court overruled the motion for a new trial and entered judgment, it necessarily held adversely to these claims of federal right. But this is not all. In the assignment of errors filed by the defendant in the Supreme Court of Illinois these claims of right under the Constitution of the United States were distinctly reasserted. * * * The fact that the Supreme Court of Illinois did not in its opinion refer to the Constitution of the United States, is not conclusive against the jurisdiction of this court to reexamine the final judgment of the State Court."

In *Kaukauna* v. *Green Bay, etc.,* 142 U. S. 254, this Court, at page 269, went still further and held that if the federal questions appear affirmatively in the record and if an adjudication of the question were necessarily involved in the disposition of the case by the State Court, this Court would take jurisdiction.

The basis of the argument that the levies in question violated the Fourteenth Amendment to the Federal Constitution are predicated upon Points I, II, III, IV, V and VII, and upon the arguments made under those Points, because if those Points are well taken, there is no law upon which to base the levies, thereby rendering them without due process and hence in violation of the Fourteenth Amendment, and this contention is made at page 23 of the brief, where section 1 of article 14 of the Federal Constitution is cited.

As appears from the petition for rehearing filed in the State Court, and which appears in the Transcript of the Record herein, at page 13, it was prayed that the Court modify its opinion to hold,

> "5. That the four acts in question and each of them do not constitute due process of law and are in violation of the Fourteenth Amendment to the Federal Constitution and have no effect in the City of Chicago and that the judgment appealed from, in so far as founded upon said acts, is also lacking in due process of law and is in violation of said Amendment."

7. That when petitioner argued that the laws in question are in violation of the State Constitution and void, it is thereby argued that there is no due process of law upon which to predicate the four levies. It follows that said levies and each of them are without due process of law in violation of the Fourteenth Amendment.

Petitioner therefore prays that this Court grant unto it a rehearing herein, to the end that Your Honors may consider any of the matters herein which the Court may have inadvertently overlooked, and that this Court may accord to your petitioner the protection afforded by the Fourteenth Amendment to the Federal Constitution, without which protection petitioner will be most grievously wronged.

And your petitioner will ever pray.

WILLIAM DAVIES CO., INC.,

By Charles McDaff

Its Attorney.